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THE DRAFTING OF THE COVENANT

By

DAVID HUNTER MILLER

WITH AN INTRODUCTION BY

NICHOLAS MURRAY BUTLER

VOLUME ONE

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THE DRAFTING OF THE COVENANT

VOLUME ONE

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by
David Hunter Miller

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PREFATORY NOTE

THE history of the origin of the Covenant of the League of Nations is known only in part, though much has been written about it and numerous relevant documents have been made public.

I hope to add to what has already been published by telling what I know of the story of the drafting of the Covenant; as part of this aim I attempt to assemble in one collection all of the important official documents which preceded and led up to the text of the Covenant as finally adopted in the Treaty of Versailles; and I throw such light upon these papers as my own notes and records afford.

Better than any one else, perhaps, I realize that this account is not complete. Of necessity, it is written from an American viewpoint; in particular there is very much that the British had to do with the making of the League of Nations of which I have no detailed knowledge and which accordingly is not here set down.

Proposals at sundry times in one form or another for the creation of a League of Nations are very numerous. With most of them this work has nothing to do. The organized efforts of various societies in several countries and the utterances and influence of many individuals played a great part in the creation, during the World War and particularly in its later period, of an almost universal sentiment in favor of *some* Association of Nations for international peace. Doubtless without those efforts and without that public sentiment there would have been no Covenant; but I attempt no account of them.

Subject to the limitations mentioned, I try to tell how and by whom and when the text of the Covenant of the League of Nations was written; adding some views of my own on its phases since that writing.

D. H. M.

1927

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INTRODUCTION

No student of history and politics will underestimate the value of this book. Americans in particular know what it means to have at the service of future generations the manuscript record of the history of the making of a great document by a close participant in every phase of the undertaking.

Had not James Madison kept an elaborate series of notes of the day-by-day happenings of the Constitutional Convention of 1787 and had he not after reflection and revision left them at his death in such form that they could pass readily into the hands of the Government of the United States, we should today be without that intimate knowledge of so much of the history of that famous Convention which is the main foundation of our understanding of the Constitution of the United States and of how it came to be what it is.

Since the making of the Constitution of the United States there has been no undertaking of equal or greater importance until the drafting of the Covenant of the League of Nations in 1919, to be incorporated in the text of the Treaty of Versailles. By this Covenant there was brought into existence a formal association of nations to fulfill the dreams of prophets and seers for hundreds of years. The hopes of a large part of mankind instantly went out to this new undertaking as the surest, if not a final and certain, protection against the havoc and cruel disaster of international war and against the constant and selfish exploitation of the weak among nations by the strong. How each one of these paragraphs came to be; what was its genesis; what were its alternative forms during the period of consideration and discussion; what were the motives and ideals behind it; how were the various national forces and their representatives aligned; what interpretation did each put upon these notable paragraphs—these are questions already being asked throughout the world and which will be asked for centuries to come.

Mr. David Hunter Miller was in the fortunate position of cooperating from beginning to end in the making of the Covenant of the League of Nations. Through his careful industry

there was made and preserved this record, which must be quite unique, of the inner history of the projects, conferences and debates which preceded and accompanied the framing of the Covenant. As a source book for the historian, the public lawyer and the statesman, this record is well nigh invaluable. It speaks for itself and is commended to the judgment and careful study of those in every land who are solicitous to follow this notable undertaking in its genesis and early history and who wish by all possible means to strengthen its hand in the development of international law, in the suppression of aggressive war and in those policies of international cooperation to protect and promote the health, the good order and the satisfactions of nations, great and small, throughout the world, which have already accomplished so much.

NICHOLAS MURRAY BUTLER

COLUMBIA UNIVERSITY
in the City of New York
March 1, 1928

THE DRAFTING OF THE COVENANT

The documental material is generally quoted or copied literally, even when there seems to be an obvious slip in the wording of the writer or transcriber; on the other hand, such matters as spelling and accents have generally been put right.

THE DRAFTING OF THE COVENANT

CHAPTER I

EARLY DRAFTS

WHENEVER there must be a meeting of minds in the preparation of any agreement, there is one apparently universal rule which always has its influence; that rule is this: any definite detailed draft prepared in advance by one of the parties will to some extent appear in the final text, not only in principle but even in language. No matter how many differences of opinion may develop, no matter how much the various papers may be recast and amended, something of the beginning is left at the end. In the drafting of the Covenant of the League of Nations may be found very striking instances of this most interesting result of written words.

The first official document which it is necessary here to consider is the Draft Convention of Lord Phillimore's Committee,[1] submitted to the British Government on March 20, 1918. I start with this paper because it was the first formulation of League of Nations suggestions in a definite text under Governmental direction. Strictly speaking, the Phillimore Draft Convention (Document 1 of this collection)[2] was not put forward as a proposal of the British Government, but merely circulated. Of course there was much background to this work of Lord Phillimore's Committee; some of it is mentioned in their Interim Report, which was addressed to Mr. Balfour, then Foreign Secretary, and was as follows:[3]

[1] Their official title was "The Committee on the League of Nations." The members of the Committee were:

The Right Hon. Sir Walter G. F. Phillimore, Bart., P.C. (Chairman).
Professor A. F. Pollard, M.A. — Sir Julian S. Corbett.
Dr. J. Holland Rose, Litt. D. — Sir Eyre Crowe, K.C.M.G.
Sir William Tyrrell, K.C.M.G. — Mr. C. J. B. Hurst, K.C., C.B.
Mr. A. R. Kennedy (Secretary).

[2] Documents referred to by numbers are in Volume II of this work.

[3] With the Report is the following note by Lord Robert Cecil:

"This Interim Report of Sir Walter Phillimore's Committee is circulated to the War Cabinet for their consideration. It is suggested that a copy should

1. We had the honour to be appointed by you as a Committee to enquire particularly from a judicial and historical point of view into the various schemes for establishing by means of a League of Nations, or other device, some alternative to war as a means of settling international disputes, to report on their practicability, to suggest amendments, or to elaborate a further scheme if on consideration it should be deemed possible and expedient, and to report to you the result of our deliberations.

2. We have held nine meetings in which our attention has been directed mainly to the various proposals for a League of Nations which were formulated in the 16th and 17th centuries and to those which have been put forward since the recent revival of the movement.

3. With regard to other methods of international combinations for avoiding war which were actually attempted during the 19th century, we have not completed our investigation, and without further inquiry into past political experience we would offer no opinion as to whether a modification of those methods or a formal League of Nations is the more promising means of securing the end in view.

4. The earlier projects which aimed at setting up a kind of European Confederation with a supernational authority we have after consideration rejected, feeling that international opinion is not ripe for so drastic a pooling of sovereignty, and that the only feasible method of securing the object is by way of cooperation or possibly a treaty of alliance on the lines of the more recent schemes.

5. We have accordingly carefully considered those schemes, all of which substitute, in place of the earlier idea of confederation, a system working by means of a permanent conference and an arbitral tribunal. None of them, however, in their entirety appear to your Committee to be practicable or likely to meet with acceptance. We have therefore, drafted a Convention in which, while embodying their leading ideas, we have endeavoured to avoid their more obvious stumbling blocks.

6. On the assumption that a League of Nations may be regarded as a possible solution of the problem, we now submit this draft as the best we have been able to devise, to serve as a basis for an interchange of views. In making it the subject of an Interim Report we have been influenced by the consideration that His Majesty's Government may regard it as desirable to initiate such an interchange of views before the termination of the war.

7. The primary object of the proposed alliance will be that

---

be sent to President Wilson confidentially, so that if he thinks right he may have it considered by an American expert committee. Copies should perhaps also be sent to the Dominions in view of the approaching conference."

whatever happens peace shall be preserved between members of the alliance. The secondary object will be the provision of means for disposing of disputes which may arise between the members of the alliance. Our draft treaty, therefore, divides itself into four parts; Articles 1 and 2, which stand very much by themselves, are to provide for the avoidance of war; Articles 3 to 12, for the pacific settlement of international disputes; Articles 13 to 17, for the relations between the allied States and States not party to the Convention; while Article 18 provides that this treaty shall override all others.

8. The mutual covenant not to go to war is contained in Article 1. We have not covered all cases. We have provided that no State shall go to war without previously submitting the matter to arbitration or to the Conference of the League, nor while the discussion is pending in debate, nor shall seek any further satisfaction than that which the award or the recommendation of the Conference requires. This leaves untouched the case in which the Conference can make no recommendation, but we are in great hope that this event will be rare. There will be every inducement to the Conference to find a mode of escaping from war, and, at any rate, the time will be so long drawn out that passions will have cooled. The other case omitted is when a State that has given cause of offense refuses to abide by the award or the recommendation of the Conference. It might be suggested that in this case the whole power of the League should be used to enforce submission, but we have felt a doubt whether States would contract to do this, and still greater doubt whether, when the time came, they would fulfil their contract. Most of the writers on this subject have hesitated to recommend such a provision.

9. It will be noted that the proposed moratorium only extends to actual warfare. Some writers have suggested that there should be no warlike preparations during the period. We have rejected this

a. because it would be difficult to ascertain what were special warlike preparations;
b. because we would designedly give an opportunity to the most peaceful State which had not kept its armaments up to a high pitch to improve them during the period of the moratorium, in this way discounting to some extent the advantages which a State which kept up excessive armaments would otherwise have had.

10. Article 2 contains the sanction proposed. We have desired to make it as weighty as possible. We have, therefore, made it unanimous and automatic, and one to which each State must contribute its force without waiting for the others, but we have

recognized that some States may not be able to make, at any rate in certain cases, an effective contribution of military or naval force. We have accordingly provided that such States shall at the least take the financial, economic, and other measures indicated in the Article.

11. Article 3 is adapted from Article 38 of The Hague Convention for the Pacific Settlement of International Disputes, 1907.

12. Article 4 expands an idea, the germ of which appears in Article 48 of the same Convention; it gives the power to a State to apply *ex parte* to the Conference of the Allied States. Reference to arbitration requires the consent of both parties, but this provision will enable any one State, party to the dispute, to bring its case before the Conference even if the other State is not willing. We have been careful to remember that there will be much jealousy. particularly among the continental Powers of Europe, of any provision which will appear to infringe their independence or sovereignty, and therefore we do not give the Conference, thus appealed to, any power of adjudication, but only one of recommendation.

13. Article 5—It is in our view desirable that if the Conference be appealed to it shall not fail to act, and, as in cases which will come under Article 12 speedy action would be required, we have made the assembly of the Conference as it were automatic. It must be a matter for diplomatic determination to settle its seat. If the League should be in the first place confined to the present Allies, a convenient seat might be Versailles. If the League should embrace a number of States, and some of those at present neutral, it might be better to place the seat in Holland or Switzerland, or possibly in Belgium, but it should be a fixed place, and in this connection we have been much impressed by Lieutenant-Colonel Sir Maurice Hankey's memorandum and address to us, in which he pointed out the great advantage arising from constant mutual intercourse between the representatives of nations, and we therefore propose that, subject to the power of substitution or addition, the ordinary diplomatic representatives at the capital which is the seat of the Conference should represent their respective States.

14. The next questions which enter into consideration in Articles 7, 19, 11, and 12 are whether the decisions of the Conference must be unanimous, and whether, if any resolutions may be passed by a majority, the voting strength of the States should differ. We have concluded to eliminate the States parties to the dispute, but the precedents in favour of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority, to issue a definite recommendation,

though we are aware that many English writers express themselves in a contrary sense. On the other hand, we have felt that for all preliminary work the vote of a majority should be sufficient. We may add that we have been rather loath to frame a scheme under which our own country should be rendered liable to have a recommendation passed against it by a majority vote in a matter vitally affecting the national interests, and that we have also felt that if some of the enemy Powers are ever to come into this League they would equally be unwilling to submit themselves to such a liability. As to the question of the voting strength in cases where a majority is to determine, most English and American writers have contemplated giving a larger vote to the more important Powers, and there are precedents, such as the General Postal Union Treaty of 1878 and the Telegraphic Convention of 1897, for giving to those Powers which have important colonial possessions additional votes in respect of their colonies; but the experience obtained during The Hague Conference of 1907 shows that any such superiority would be greatly resented by some States, and we have shrunk from providing it.

15. Article 11, as it will be seen, is expressed in an alternative form. The first alternative is that which commended itself to the majority of the Committee.

16. Article 12 is a substitutional provision for that power of injunction which has been recommended by many English and American writers. It has been felt that if there is to be a moratorium, there may be cases of continuing or irreparable injury to which the injured State cannot be expected to submit. In order to meet this difficulty these writers have taken an idea from the legal procedure common to Great Britain and the United States. But in applying this procedure to international matters the following objections seem to arise:

a. If final awards or recommendations are not to be the subject of enforcement by the League, it would seem illogical that interlocutory awards or recommendations should be so enforced.
b. The aggressive State would certainly resent such an infringement of its sovereignty and struggle to prevent the use of an injunction and the proceeding would almost necessarily be so prolonged, particularly if the injunction is to be the work of the whole Conference, that the interlocutory decision would hardly be reached sooner than the final one, and the mischief would have been done;
c. It may be added that such knowledge as any of the members of the Committee have of such foreign juris-

prudence as is founded on the Code de Napoléon, leads them to doubt whether the procedure which most nearly approaches to the Anglo-American injunction has received the same development or occupies the same position of importance which it has with us.

17. The Committee have, therefore, rejected the idea of injunction, and submit this Article as a corrective for hardship which might otherwise be worked by the moratorium.

18. Article 15 requires some observation. The scheme of the British League of Nations Society makes the League a defensive alliance as against external Powers, and requires all the other Allied States to come to the assistance of any one of them "which may be attacked by an outside Power which refuses to submit the case to an appropriate tribunal or council"; but the American League to Enforce Peace has omitted this provision, and only one known American speaker or writer has taken the line of the British League. We have felt, therefore, that our draft treaty might provoke opposition if we inserted a clause obliging the Allies to mutual defense against external Powers, and we have substituted one which is facultative only.

19. Under Article 17 we might draw attention to the suggestion that when the League is once formed any future applicant for admission may have terms imposed upon him. This would enable the League to require reparation for past outrages, or to insist upon partial disarmament if the military or naval forces of the applicant were disproportionate to those of the States already in the League.

Despite great differences both in form and in substance between the Phillimore Plan and the Covenant, some of the ideas of the Phillimore draft remain in words of its authors; thus the language of Article 18 of the Phillimore Plan is not much changed in Article 20 of the Covenant as may be seen from reading them side by side:

PHILLIMORE	COVENANT
Article 18. A. The Allied States severally agree that the present Convention abrogates all treaty obligations *inter se* inconsistent with the terms hereof, and that they will not enter into any engagements inconsistent with the terms hereof.	Article 20. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engage-

B. Where any of the Allied States, before becoming party to this Convention, shall have entered into any treaty imposing upon it obligations inconsistent with the terms of this Convention, it shall be the duty of such State to take immediate steps to procure its release from such obligations.

ments inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Indeed the historian will find in the Covenant a great deal of the Phillimore Plan. The substance of most of Article 1 of the Phillimore Plan, the covenants not to resort to war before arbitration or its alternative, is in Article 12 of the Covenant; the latter part, the agreement of peace with a Power that complies with the award or the recommendation regarding the dispute, being in Articles 13 and 15. The economic sanctions of Article 16 of the Covenant are quite similar to Article 7 of the Phillimore Plan; and its provisions in Articles 3 to 11 for the pacific settlement of international disputes contain much that is found in Articles 13 and 15 of the Covenant on this subject. Similarly the provisions regarding outside States found in Article 17 of the Covenant have to some extent as their basis Articles 13 to 16 of the Phillimore Plan.

Like the Covenant, the Phillimore Plan did not attempt in the agreements which it provided against war to cover *all* possible cases; and similarly it avoided obligatory arbitration; and it is an interesting circumstance that after consideration the Phillimore Committee rejected the suggestion that there should be no "warlike preparations" during the period that a dispute was pending, a suggestion that was proposed at Paris by the Japanese delegation, and that was at one time accepted by the Commission on the League of Nations and known as Article 12 a, although finally eliminated from the text.[1]

Still, while much of the Phillimore Plan is in the Covenant, some of it is not and there is a great deal of the Covenant which is not forecast by the Phillimore Plan at all. The Phillimore Committee seem to have envisaged the Conference as a meeting that came together only in case of serious dispute or crisis. Despite the memorandum of Sir Maurice Hankey which is men-

[1] See page 454.

tioned in the Report, the Phillimore Plan did not provide for any regularly recurrent meetings at all; its Conference was the diplomatic group in a particular Capital which came together when they were convened at a time of stress. Incidentally this left out the British Dominions entirely—perhaps March, 1918, was too early to think of them as we do now; the idea of structural permanence, of an organization, was absent, for there was no Secretariat; and there was to be no smaller group of Powers, such as the Council now is, for it seems that the Phillimore Committee were not thinking of a universal League but, at least for the time being, of quite a limited League; although they speak in their Report of the League embracing "a number of States and some of those at present neutral," they thought also of the possibility that the League should "in the first place be confined to the present Allies;" there is nothing in the Phillimore draft regarding a Permanent Court of International Justice or regarding disarmament; and it contained no provision for international cooperation through the League in humanitarian, social and other matters of international interest; and there was nothing about open diplomacy and naturally enough nothing about Mandates and no Article 10.

Despite the obvious origin in the Phillimore Plan of much of what is now in the Covenant, the Phillimore League, if I may call it so, would have been a League not only limited in numbers, but limited in function to the consideration of disputes on urgent occasions and with the attempt and in the hope of preventing war as the result.

In chronological order the next paper is the Report of the Committee appointed by the French Government to examine the conditions on which a League of Nations might be constituted. This is dated June 8, 1918.[1] I do not know when it was first seen by President Wilson or by Colonel House. Its text was before me some time in the summer of 1918 together with the comments thereon by Lord Phillimore's Committee.

This "Note by Lord Phillimore's Committee," dated August 9, 1918, addressed to Mr. Balfour, contains an accurate and convenient summary of the French Plan, so I print it here:

1. In compliance with your request we have taken into our consideration the Report dated the 8th June, 1918, of the Commit-

[1] For the text, see (in Document 20) Annex 11 to the French minutes of the First Meeting of the Commission on the League of Nations. There is an English translation in the English minutes (Document 19).

tee appointed by the French Government to examine the conditions on which a League of Nations can be constituted for the preservation of peace on the basis of right.

2. We observe that the Report represents the result of the preliminary enquiries of the Committee; that the French Government had intended to prepare definite proposals for submission to the Allied Governments, but, owing to the pressure of other affairs, has not had the necessary opportunity of doing so; and that the Report has been communicated at this stage as an aid to future discussion. This being so, it is not unnatural that the Report should consist of a statement rather of principles than of concrete proposals. It contains an outline scheme of a League of Nations, and the general nature of this scheme sufficiently accords with our proposals to justify the belief that an interchange of views might result in substantial agreement.

3. The scheme indicated in the Report may be summarily stated as follows: There is to be an International Council, consisting of the responsible heads of the States parties to the League or their Delegates which is to meet yearly. It is to appoint a committee which is to be in permanent session charged with the duty of preparing the work of the Council, summoning it and preserving its archives. The committee is to consist of fifteen persons appointed for a definite period of time. Justiciable disputes are to go to an International Tribunal, other disputes to the Council. Diplomatic, juridical, and economic sanctions are provided, and the decisions of both the Tribunal and the Council are to be enforced, if need be, by joint economic, military, and naval measures. The Council may call upon the parties to the League to employ similar measures against an outside State "seeking to impose its will upon another," and it is contemplated that the forces of the League may be used against an outside State refusing to submit a dispute with a member of the League to the Tribunal or the Council, as the case may be. The forces at the disposal of the League are to be provided by contingents supplied by the States parties to it in proportions to be settled by the Council, and the nucleus of an international military staff is to be formed. The question of limitation of armaments is reserved for subsequent consideration.

4. Such in general is the scheme outlined. It is not quite clear what States are to be admitted to the League, but there is a passage in the Report (Section 1, Paragraph 3) which implies the exclusion of the Central Powers so long as they retain their present forms of government. It is not explicitly laid down that a party to the League is not to go to war before submission of the dispute, though we judge that this is intended to be a term of the Treaty. The Report is silent on the question whether a majority or unanimity is required for the decision of the Council, or of the

Standing Committee, or for the election of the Standing Committee. Section IV, I (4) which deals with the reference to arbitration, is not effective for the purpose of enforcing arbitration, which apparently is the object in view. Further, the proposals, so far as they relate to the provision of an international army, the enforcement of decisions of the Tribunal and the Council, and the obligation of the parties to the League to make common cause against an outside State in certain events go beyond what we have been prepared to recommend.

5. Other criticisms of the Report might be made, but we do not think that any useful purpose would be served by attempting an exhaustive comment. As already mentioned, the Report is not, like our own, cast in the form of proposals; and the use of somewhat general language—to be expected in a statement of principles—has enabled the Committee to put forward ideas, which in reducing our scheme to definite articles of a draft treaty, we have had on consideration, sometimes with reluctance, to reject.

6. We are satisfied, however, that there is sufficient agreement between the French Committee's Report and our Report to encourage His Majesty's Government to proceed further in the direction of securing general agreement.

President Wilson's advocacy of a League of Nations had been very definitely proclaimed in the last of his famous Fourteen Points of January 8, 1918:

> A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

It was very natural that Mr. Wilson, with the Phillimore Plan before him, should turn to Colonel House and his advisers for a plan embodying his views.

The House Draft (Document 2) was forwarded to Wilson on July 16, 1918, and, as the following letter of transmittal shows, it adopted various proposals of the Phillimore Plan ("the British Draft" of the letter):

> I am enclosing you the draft for a League of Nations. The Preamble and Articles 1, 2, and 3 are the keystone of the arch.
>
> It is absolutely essential for the peoples of the world to realize that they can never have international peace and order if they permit their representatives to sanction the unmoral practices of the past. Every large nation, as you know, has been

guilty. Bismarck's forgery of a telegram in order to force a war on France is a notable modern instance. Roosevelt's rape at Panama brings it closely home. If these things had been done by private individuals they would have been classed as criminals.

Articles 1, 2, and 3 might well come under the Preamble. The reason they are segregated is that it gives them emphasis and makes the pledge binding.

No. 4 was written with the intention of satisfying those who would be distrustful of Germany in the event she became a signatory power.

It is necessary I think to do away with the abominable custom of espionage, but to abolish it and leave some dishonorable nation free to surreptitiously prepare for war would be a mistake. It is to be remembered that nations are even more suspicious of one another than individuals, and such suspicion, as in the case of individuals, is nine times out of ten unfounded. Instead of letting this condition grow there should be some way in which the truth could be openly arrived at.

No. 6 is taken largely from Article 5 of the British Draft. Two alternatives are named for the seat of meetings because it is conceivable that there might be trouble between Holland and Belgium, and if either of them represented Z or Y it might be necessary to move the conference to Z.

No. 9. The first and last sentences in this are taken verbatim from Article 7 of the British Draft. I interlarded a sentence providing for a Secretariat and for the funds to maintain it.

To all intents and purposes the representatives of the contracting powers become automatically an International Parliament, and I am sure it will be necessary for them to be in almost continuous session. I believe that it will be a place of such power and consequence that the contracting parties will send their leading statesmen to represent them. It will be a greater honor to become a member of this body than to hold any other appointive position in the world, and it is probable that ex-Presidents, ex-Prime Ministers, and ex-Chancellors will be chosen.

No. 10 provides for an International Court to have jurisdiction to determine certain questions which are now determined in many countries in courts of last resort. This court should be smaller than fifteen members.

In the past I have been opposed to a court, but in working the matter out it has seemed to me a necessary part of the machinery. In time the court might well prove the strongest part of it.

No. 11 was written largely to conform with the laws and practices of certain nations, particularly the Latin American Republics.

No. 12 has in mind the possibility of using, if desired, courts of last resort now in being, as a medium for the settlement of disputes in the event other methods prescribed do not appeal to certain nations. I also had in mind that if such a provision were a part of the Covenant, it would have a tendency to make all courts of last appeal broader and less biased in passing upon international questions.

Nos. 16, 17, 18, and 19 are obvious and in the event that it is desirable to have a League limited to the Great Powers, these articles would force every nation not a member of the League to submit their disputes to the League, or use the forms of settlement prescribed by it.

Articles 13, 14, and 16 of the British Draft seek in a measure to accomplish the same purpose, but in an entirely different way.

No. 20 was written with the thought that it would not do to have territorial guarantees inflexible. It is quite conceivable that conditions might so change in the course of time as to make it a serious hardship for certain portions of one nation to continue under the government of that nation. For instance, it is conceivable that Canada might sometime wish to become a part of the United States. It is also a possibility that Chihuahua, Coahuila or Lower California might desire to become a part of this country and with the consent in each instance of the mother country.

No. 22. The first sentence of this article is taken verbatim from the British Article 17. I did not use their second sentence for the reason that it seemed to point to Germany, and I have worded the second sentence of No. 22 differently to avoid this.

No. 23 is almost a verbatim copy of Article 1 of the British.

I was consulted in connection with the preparation of this draft of Colonel House at Magnolia, Massachusetts, in the early summer of 1918. However, while I made suggestions about the draft, I was not given a copy of it and at the time made no written memorandum of its contents. It is perhaps literally true that no one then had a copy of this draft of House except President Wilson and House himself.

In the draft of Colonel House may be found not only much of the Phillimore Plan but also some other beginnings of the present Covenant. Compare his Article 5 with the first words of Article 11:

ARTICLE 5 (House)	ARTICLE 11 (Covenant)
Any war or threat of war is a matter of concern to the	Any war or threat of war, whether immediately affecting

League of Nations, and to the Powers, members thereof.	any of the Members of the League or not, is hereby declared a matter of concern to the whole League.

Similarly a disarmament Article (21) appears in the House Draft, and to a considerable extent the words of it are the words of Article 8 of the Covenant.[1] The House Draft (Article 20) contains the guarantees of Article 10 subject, however, to territorial changes in accordance with the views of three-fourths of "the Delegates" pursuant to the principle of self-determination. It also made provision for a Permanent Court, as to which matter House said frankly in his covering letter he had changed his mind. House also had the vision to provide for a Secretariat and for the funds to maintain it, for he thought that the Conference would be "in almost continuous session" and that the leading statesmen of the various countries would represent them before it.

In line with House's ideas about a Secretariat, his draft appears to have envisaged meetings of the Conference not only for the purpose of settling disputes, technically pending, as in the Phillimore Plan, but whenever desirable in the interests of peace (Article 7).

On the other hand, some of the provisions of the House Draft which he regarded as of the utmost importance, "the keystone of the arch" he called them, the provisions against espionage and so on, (see Preamble and Articles 1-4) entirely disappeared, unless they may be said to remain in the Covenant Preamble in the phrase, "open, just and honorable relations between Nations." The House Draft laid even more stress on arbitration than did the Phillimore Plan. Indeed the House Draft went the whole way toward obligatory arbitration; every dispute that was not settled by diplomacy went either to the International Court or to arbitrators for final settlement. The sanctions of House were not war, at least in terms, but loss of economic and commercial privileges and finally, blockade.

President Wilson's First Draft (Document 3) had for its basis the suggestions of Colonel House.[2] All I knew of it at the time was that in the late summer of 1918, Colonel House showed it to me at Magnolia; later on I made from memory a

[1] Cf. Wilson's language in his Second Inaugural Address of March 5, 1917: "National armaments should be limited to the necessities of national order and domestic safety."

[2] See *Woodrow Wilson and World Settlement*, by R. S. Baker, vol. i, p. 218 *sqq.* References hereafter to "Baker" are to this work.

very brief and rough memorandum of the subjects which it covered.

This First Draft of Wilson took most of its thirteen articles from the draft of House, with some changes. Thus, the first four articles regarding the Body of Delegates, their meetings and procedure, the territorial guarantees and disarmament are substantially the provisions of House; so are the provisions regarding arbitration, which in the Wilson draft are Articles 5 and 9, although these are somewhat expanded. The sanctions of Wilson (Articles 6, 7 and 10) are much more explicit and far reaching than those of House in respect of military operations; thus in Article 7 where blockade is mentioned, Wilson adds the words "and to use any force that may be necessary to accomplish that object." In the case of a war commenced by an outside Power refusing arbitration, the draft of House (Article 18) merely provided that any of the Signatories "may come to the assistance of the Contracting Power;" Wilson (Article 10) makes this an absolute obligation in sweeping terms:

> The Contracting Powers shall also unite in coming to the assistance of the Contracting Power against which hostile action has been taken, combining their armed forces in its behalf.

Various proposals of House were omitted by Wilson. He left out House's first four articles about espionage, etc., and also the article for the setting up of an International Court, although the expression "judicial decision" remains in various instances in the Wilson draft (e. g. Article 9).

Wilson wrote his own Preamble, abandoning in this regard the House Draft entirely and what he wrote then became very nearly the Preamble of the Covenant.

I have given above a comparison of some of the House language with Article 11 of the Covenant. The comparison may now be carried a little farther by seeing how Wilson expanded the language, laying his version beside the first sentence of Article 11:

ARTICLE 8 (Wilson)	ARTICLE 11 (Covenant)
Any war or threat of war whether immediately affecting any of the Contracting Powers or not, is hereby declared a matter of concern to the	Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to

League of Nations and to all the Powers signatory hereto, and those Powers hereby reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

Wilson's first Covenant (Document 3) may be summed up by saying that it provided for organized meetings of representatives of the Powers of the world (what we call now the Assembly), with a Secretariat, qualified guarantees of territorial independence, disarmament and obligatory arbitration as to Members of the League, both *inter se* and as against any outside Power, with a uniting of forces against any State that rejected arbitration and went to war. In these latter features, indeed, this First Draft of Wilson more nearly resembles the Protocol of Geneva than it does the present Covenant.

CHAPTER II

AMERICAN SUGGESTIONS

During 1918, as a member of the Committee appointed by Secretary of State Lansing to consider legal questions which might arise at the Peace Conference,[1] I had devoted much of my time to a consideration of the foreign policy of President Wilson as announced in diplomatic correspondence, speeches and messages to Congress. Among the papers which I had prepared was a monograph called "The American Program and International law," in which I reviewed substantially everything on foreign policy that President Wilson had said or written up to that time. The length of that monograph forbids its being printed here; but I shall occasionally refer to it as its formulation of my own views of President Wilson's program had a direct influence on the work that I did at Paris.

President Wilson reached Paris on December 14, 1918, thirty-three days after the Armistice with Germany.

Prior to his arrival and to my detail as Technical Adviser to the American Commission to Negotiate Peace I had been attached to Colonel House's Mission in Paris, as Legal Adviser.

During the latter part of November, I had prepared certain drafts of my own regarding an Association of Nations. I used the word "Association" because it was the word which President Wilson used in his Fourteenth Point; but also I preferred it to the word "League"; the idea of the Covenant is much more nearly expressed by the word "Association" than by any other; and it is a much better equivalent of the French, "Société"; I have always regarded it as very unfortunate that the word "Association" was not used in the Covenant. Words, as distinguished from realities, have a very great influence on the average intelligence; people thought that a "League" could not be an "Association"; and Mr. Harding, by using the word "Association" as if it was a new idea of his own, confused sentiment in the United States all the more.

[1] The other members of the Committee were Mr. Lester H. Woolsey, Solicitor of the Department of State, and Dr. James Brown Scott.

Those draft papers of mine consisted of an Agreement for an Association of Nations, a Declaration for Open Diplomacy and a Declaration for Equality of Trade Conditions, accompanied by some comments. Colonel House had copies of these papers on December 1, 1918. They were written, as I told Colonel House at the time, chiefly with the idea of bringing into view the difficulties which all the questions presented, for as always, such difficulties are more clearly brought forward by a draft agreement than by a volume of general discussion.

It is not worth while to reprint those papers, but there are one or two points in them that I shall mention.

Open Diplomacy was the First of President Wilson's Fourteen Points[1] and in my monograph on the American Program I had written at some length on the subject. There was no allusion to Open Diplomacy in the Phillimore Plan, in the House Draft, in Wilson's earliest or Washington Draft (Document 3) or in his Second Draft, his First Paris Draft (see Document 7). My formulation provided in substance for publicity of all treaties and international agreements, existing and future.

Economic Equality was the Third of President Wilson's Fourteen Points, which read as follows:

> The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

As a counter move against both the German notion of economic domination of other countries and the ideas of the Allies, of 1916, nothing could have been more sound. But the practical difficulties in the way of any *general* agreement on the question were almost insuperable. I had discussed some of these in the monograph mentioned above.[2]

[1] The Point on Open Diplomacy read thus:

"Open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view."

With it should be read the letter of Wilson of March 12, 1918, to Secretary of State Lansing in which he said:

". . . . certainly when I pronounced for open diplomacy I meant, not that there should be no private discussion of delicate matters, but that no secret agreements of any sort should be entered into, and that all international relations when fixed should be open, aboveboard and explicit."

[2] The following paragraphs are extracted from that discussion:

The principle of equality of trade may be understood to mean that as to any given country, all other countries and their nationals are on an equal

In the first two drafts of Wilson, his Washington Draft and

footing in matters of tariff rates, port dues, traffic rates, inspection laws and other matters which bear on international traffic. The principle is not understood in any way to limit national action in carrying out national policy. For example, a nation may prohibit the entry or export of a particular commodity. It may close a port; it may impose a high tariff, or a low tariff, or no tariff at all; it may provide such administrative regulations of customs, of inspection, and so on, as it sees fit, *provided* that in each case all other nations are treated alike. Furthermore, it is not understood that equality of trade has any bearing on domestic trade as such. A nation would (so far as the principle of equality is concerned) be free to confine domestic trade to its own nationals, or a portion of such trade, as for instance, coastwise shipping, but here again it could not admit one country and exclude another, or admit one country on more favorable terms than another.

* * * * * *

One vital point involved in the meaning of the principle of equality has not been noticed. That is, when is trade to be regarded as international and not domestic for this purpose, or in other words, what is for this purpose to be considered a nation? To put the question concretely, is India for example to be considered a nation as distinct from Great Britain and from Canada? Are the Philippines to be considered a nation as distinct from the United States? Results of enormous practical importance are involved in the answers given to such inquiries. Obviously if the British Empire is to be considered a unit for this purpose and every kind of regulation and preference "within the (British) Empire" is to be permitted, the whole principle would be defeated in advance. It is impossible to suppose that equality of trade would in any substantial view be reached if Great Britain could pass laws favoring, as against the rest of the world, the trade of Lancashire with the 300,000,000 people of India.

* * * * * *

Further, the principle of equality as heretofore outlined, would if rigidly applied in its strict letter, prevent reciprocity treaties and similar bargaining trade relations of all kinds, either between independent states, or between a state and a dependency or a colony. That in general, such arrangements are wholly contrary to the spirit of equality may be admitted, yet particular instances may well be allowed as apparent but not real exceptions. The idea of equality of trade is a practical idea and not a group of words, and reciprocity between Canada and Newfoundland, or Australia and New Zealand, or Norway and Sweden could not seriously be thought to impair the idea.

* * * * * *

Further, when the principle of the open door is to apply, the application should not only be rigid, but the manner of the application should be for the benefit *of the country to which the door leads.* Not only are indirect or concealed preferences here as objectionable as elsewhere, but the scheme as a whole should benefit the dependent country and not any other country, or even all other countries. A high tariff may be as beneficial to Uganda as to Germany and if a high tariff is beneficial there is no reason why those who choose for Uganda should not be allowed to choose a high tariff if they so decide.

The principle of equality also requires that a country such as China should be free to adopt her own economic policy for her own benefit, or rather for her own benefit *as she sees it* and not as any others may see it; and the pernicious practice of pledging customs receipts or other revenues for payment of loans, with an agreement neither to raise nor lower the stated rates lest the receipt of taxes should be diminished, which is a pledge of the debtor's sovereignty *pro tanto* to the creditor, should be abolished if such states as China are to decide their own destinies.

* * * * * *

his earliest Paris Draft,[1] there was no mention of Economic Equality. There were some who thought that a general Convention on the question might be entered into; indeed, as will later appear,[2] the British made proposals on the subject; but it always seemed to me that the political obstacles in the way of such a treaty could not be overcome even if all the technical questions could be satisfactorily answered, which was at least highly doubtful; and the comment that I made on my own draft at the time was that "it only emphasizes the very great difficulties of the whole subject"; and in the Covenant there was finally (and I think wisely) no more than this very general statement of principle in Article 23 (e):

> Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League . . .
>
> (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. . . .

Any attempt at more might have been fatal or impossible or both.

However, as the last of the eight Articles of my draft Declaration for Equality of Trade Conditions did, in a changed form,

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Again, government ownership in vast fields of industry will open up problems in international intercourse entirely new. Obviously if two governments are competing in the same business, or if many states are engaged in business, disputes will arise such as now arise in commercial affairs between merchants and traders; that such disputes should be affected one way or another by theories of sovereignty, or should exclusively be treated through the "diplomatic channel" would be simply to provide new grounds for war, after elaborate efforts spent and it may even be supposed success achieved, in eliminating most of those heretofore available. Ideas of sovereignty must in many ways be modified or abandoned, and if the state is to be in business, the state must leave its state robes at the foreign office and go to business in a business suit.

The United States has pointed out a way by which these results may be reached without loss of dignity, namely, the formation of corporations owned by the government. Whether this way is generally followed or not, a state must act in business like any honest trader, submit its disputes to any court in any jurisdiction where it does business and has property, and expect to lose some of its disputes and pay accordingly.

It will, therefore, be necessary to formulate a rule of international law of substantially the following purport:

> "A state engaged in commerce shall not in respect thereof have or be deemed to have any of the rights, privileges, immunities, duties, or obligations of sovereignty."

[1] See Document 7.

[2] See Document 4, and page 33.

get into the Treaty of Versailles, I digress here to say something about it. The point is now one of great and increasing commercial and legal importance.[1]

This Article as I wrote it read thus:

> A State engaged in trade or commerce shall not in respect thereof have or be deemed to have any rights, privileges, immunities, duties or obligations of sovereignty.

and my note on this Article at the time was as follows:

> The progress of States toward what is vaguely called "Socialism" or "Nationalization of Industry" requires the formulation of rules of international law not now existing. It is the law in the United States that a State which engages in a commercial transaction cannot, when in Court, escape the general rules of law by reason of its sovereignty, although it may not be sued. Considering the enormous possibilities of this subject for the future, it is believed that a State should neither be benefited nor burdened by the rules attached to the question of sovereignty when commercial transactions are involved. Article 8 has been drawn with this end in view. It should be added that the rule therein formulated would, in respect of commercial transactions, place a neutral State in time of war in the same situation as one of its citizens or subjects. The whole question is one of great interest to the United States in view of its present ownership (through the medium of a corporation) of a very large merchant fleet.

In the Treaty of Versailles this proposed rule of law, which ought to be and of necessity must come to be the rule of the world, was made to apply to Germany alone, in favor of the other Signatories to the Treaty and without reciprocity, by Article 281 reading as follows:

> If the German Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty.

As is told in the book of Mr. Lansing,[2] he wrote to President Wilson on December 23, 1918, enclosing various drafts which were called "Suggested Draft of Articles for Discussion,"

[1] See "Legal Status of Government Ships Employed in Commerce," by J. W. Garner, *A. J. I. L.*, vol. xx, p. 759.

[2] *The Peace Negotiations*, p. 48 *sqq.*

"Suggestions as to an International Council for Discussion" and a memorandum on "The Constitutional Power to Provide Coercion in a Treaty."

It is unnecessary to review these papers in detail; but one comment of Mr. Lansing on the draft entitled "Suggestions as to an International Council" should I think be answered. As to this Lansing says:[1]

> It should be noted that the basic principle is the equality of nations. No special privileges are granted to the major powers in the conduct of the organization. The rights and obligations of one member of the League are no more and no less than those of every other member. It is based on international democracy and denies international aristocracy.

Now let me paraphrase one of these sentences a little and make it specific instead of general:

> The rights and obligations of Albania as a member of the League are no more and no less than those of the British Empire.

As to such a statement my view is that what it suggests is nothing but a form of words having no meaning whatever in the actual world in which human beings live. Of course the doctrine of equality of states means that a small and insignificant and feeble state is entitled to fair and just treatment on a footing of equality before the law with larger neighbors;[2] but to say that in any international organization or in international affairs however conducted or in international relations either of the present or of any past whatever, the influence or moral or political authority in the world of a few thousand backward people organized as an independent unit or state entity has been or should be the same as that of a country like the United States, for example, is simply to shut one's eyes to everything except a few words of print. All these lawyers' phrases must yield to facts in their application. The civilized peoples of the world are generally organized in the form of States; but any recognition of the fact that Canada may not technically be a State cannot and does not deny to those ten million people an international status, whatever essays might be written on the theory of state-

[1] *op. cit.*, p. 58.

[2] See "The Doctrine of Legal Equality of States," by P. J. Baker, *British Year Book of International Law* (1923–1924), p. 1.

hood and sovereignty.[1] Furthermore the States of the world are in fact at different stages of development, civilization, size, wealth and intelligence. In the science of government, some of them are literally centuries ahead of others. Any attempt in the conduct of international affairs to wholly disregard these differences would be sheer folly. The few civilized negroes who with their fellows compose the State we call Liberia are of course as much entitled in law and in morals to be protected against aggression or against international discrimination as is France; but to say that Liberia has the same "right to control the affairs of the world in times of peace" as Germany, for example, is to advocate a condition of affairs which, if it existed, would simply be international anarchy. Happily it never can exist, for if it did, no international cooperation, no international organization of any kind could exist with it; even a World Court could never be constituted if the cultural as well as other superiorities of certain Powers of the world were not in some way recognized.

Mr. Lansing on December 24 gave to Dr. James Brown Scott and myself copies of his papers above mentioned. At a conference we had had with him on December 21 he had read us one of them, the "Articles for Discussion" and at that time I had expressed a favorable opinion regarding it; however, on the constitutional question raised by Lansing's paper entitled "The Constitutional Power to provide Coercion in a Treaty," I expressed views not in accord with those of Lansing; and I had then and have now no doubt at all in the matter.

Undoubtedly Congress has the power to declare war and undoubtedly, as Lansing says, that power cannot be delegated; but that statement is wholly beside the point in considering the power of the United States to agree by treaty to do something in the future; in the case supposed to declare war. Unquestionably the United States can make such a treaty, i.e. a treaty that our country will, in certain contingencies, go to war, an alliance, for example. I am not discussing the advisability of such an agreement, but merely the constitutional power to make it, which in my view cannot be seriously questioned. If and when the time came and Congress refused to declare war, the refusal would simply be a breach of the treaty.

Almost every treaty commits the country to action or inaction in the future. In a treaty we may say, as we often have, that the nationals of a certain country shall have the right to

[1] This phrase was written before the Imperial Conference of 1926.

sue in our Courts; this is not a delegation of judicial power, for it simply means that the United States agrees that our Courts shall grant the privilege; and if any particular Court refused it in a given case that particular refusal would be a breach of the treaty. A treaty which requires legislation or other action by Congress to carry it out in a given case is not void. If it were, the Louisiana Purchase was void because it required an appropriation to carry it out; the Treaty of Peace with Spain was void because it required an appropriation of twenty millions to "pay for the Philippines";[1] indeed, if a treaty containing an agreement for the future regarding a matter which, under our Constitution, is within the powers of Congress, is void, almost all of our treaties were void when they were made, because very generally they have required Congressional action or at least inaction, the refraining by Congress from passing legislation that Congress *might* pass. It would be a strange doctrine that would make us think that the Panama Canal Treaty is a nullity because it requires a Congressional appropriation of $250,000 every year to carry it out, by way of payment to Panama.

Views similar to those of Mr. Lansing were hinted at in the report of the American Delegates to the Second Hague Conference of 1907;[2] and they have been effectively answered by John Bassett Moore:[3]

> In reality, the suggested constitutional difficulty seems to lack substance. To say nothing of the fact that the regulation of methods of warfare would appear to be particularly within the treaty-making power, the principle of interpretation on which the doubt is suggested appears to be radically unsound and to belong in the category of notions which tend to bring constitutional law into disrepute. That the United States cannot internationally agree to forego the exercise of any power which the Constitution has conferred on Congress, or other department of government, is a supposition contradicted by every exercise of the treaty-making power since the government came into existence. When we reflect upon the number and extent of the powers conferred upon the national government, and upon their distribution and the methods prescribed for their exercise, it is obvious that the attempt to act upon such a supposition would exclude the United States from any part in the progress of the world through the amelioration of law and practice by international action.

[1] The Treaty does not so apply the payment; but public opinion rightly did.
[2] See *The Hague Peace Conferences of 1899 and 1907*, by J. B. Scott (1909), vol. ii, p. 223.
[3] *Principles of American Diplomacy*, (1918), p. 65.

My views on this constitutional question were set forth in the following memorandum, written at the time:

> There is no express limitation in the constitution of the United States as to the subject matter to which treaties made on the behalf of the United States may relate, general power being granted in general language to make treaties. The subject matter of such treaties must be deemed to extend *at least* to such instances as had been at the time of the adoption of the Constitution commonly included as subjects of agreements between States.
>
> It is unnecessary to discuss the doctrine that the treaty making power of the United States is subject to the general limitations contained in the Constitution, and that a treaty conflicting with other provisions of the Constitution would be void, as that doctrine is believed to be correct by the undersigned, and will at least be accepted as correct for the purpose of this memorandum. It is true that there is no decided case holding void a treaty of the United States as contrary to the provisions of the Constitution, but it can hardly be doubted, for example, that a treaty which attempted to deprive a person of life, liberty or property without due process of law, would, like a statute to that effect, be invalid.
>
> Treaties which bind the United States to future action must like all executory instruments, contain either affirmative or negative covenants. While it is immaterial from an international point of view what Department of Government may be charged in a particular case with the execution of a particular treaty, the subject is one highly important from a constitutional point of view. Obviously a negative covenant on the part of the United States is a covenant that *no* Department of the government shall perform the act covenanted against. On the other hand, a positive covenant of the United States may be carried out, according to its system of laws, either by the executive, the judicial or the legislative branch of the government. In other words, the United States *itself* is charged with the fulfillment of the covenant, and by its constitution, one of its particular departments of government is charged with the fulfillment on behalf of the United States of the international obligation.
>
> Instances in treaties which bind the United States to do or refrain from doing an act of a legislative nature are very common. Under our Constitution, these acts of a legislative nature must be done or must be refrained from, as the case may be, by Congress. For example: Treaties requiring the payment of money by the United States have frequently been entered into. For the carrying out of these treaties in each case, an appropriation is necessary which requires an Act of Congress, in order that payment may be made from the Treasury. In no instance has the

United States ever entered into such a treaty without such an Act of Congress being subsequently passed, but it is clear that Congress might if it saw fit refuse to make an appropriation and its refusal would be a breach of treaty by the United States. Indeed, it was such a refusal by the Chamber of Deputies of France which brought the United States and France to the verge of war in [respect of the Treaty of] 1831.

Another very common instance in treaties is "the most favored nation" clause. This clause, so far as it relates to tariffs, imports a negative covenant on the part of the United States not to levy particular tariffs on goods coming from the other country with which the Treaty was made. Clearly this is a treaty which may be violated by an Act of Congress, precisely as the Chinese Exclusion Act violated the treaty with China, which contained a negative covenant.

Congress has the power to declare war, but I submit that a treaty which binds the United States in certain contingencies to declare war or which binds the United States in certain contingencies not to declare war, is of the precise nature of the treaties previously mentioned. As to the latter point, the question is hardly open, for all of the Bryan Peace Treaties bind the United States not to declare war in certain cases, and it is obvious that the power of Congress to declare war in those cases and thus to breach the treaty still exists. The same is true of an agreement to declare war upon a condition subsequent; upon the happening of the condition, it would become the *duty* of Congress to declare war and thus fulfill the treaty obligation, but it would also be within the *power* of Congress to refuse to declare war and thus breach the treaty obligation.

Can it be doubted that the United States has the power by treaty to enter into an alliance? At the time of the adoption of the Constitution, treaties of alliance were very common, and a treaty of alliance existed between the United States and France which had been ratified by Congress May 4, 1778, and which was abrogated by Act of Congress July 7, 1798. That treaty contained the following language:

> If war should break out between France and Great Britain during the continuance of the present war between the United States and England, His Majesty and the said United States shall make it a common cause and aid each other mutually with their good offices, their counsels and their forces, according to the exigence of conjunctures, as becomes good and faithful allies.

And also contained the following:

> Neither of the two parties shall conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war.

It was obviously to such treaties of alliance that Washington referred in his famous farewell address, in which he said:

> It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion it is unnecessary and would be unwise to extend them.
>
> Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

It is hardly necessary to point out that a treaty of alliance even though of a defensive nature is an engagement to go to war, upon a condition subsequent. It is true that the parties may differ in a given case as to whether the *casus fœderis* has or has not arisen, but if it admittedly has arisen, the obligation to declare war exists, an obligation which *internationally* binds the *government* which has entered into it,—an obligation which *constitutionally* binds that department of government which is charged with the duty or is granted the power of declaring war, an obligation which constitutionally does not and cannot compel that department of the government to make the declaration of war, but which internationally is broken by the government which made it, when the department of government having the power to declare war refuses to do so.

Later portions of Mr. Lansing's draft "International Agreement" are also to be mentioned. On January 7, 1919, Lansing handed to Wilson this draft in six Articles. Of these Articles, one and two were respectively the "Articles for Discussion" and the "Suggestions for an International Council for Discussion" above mentioned.[1] The remaining four of the six Articles were

[1] p. 22 *sq.*

respectively entitled "Peaceful Settlements of International Disputes," "Revision of Arbitral Tribunal and Codification of International Law," "Publication of Treaties and Agreements" and "Equality of Commercial Privileges." [1]

One suggestion of Lansing in these later Articles should be specially noticed. In clause 1 of his Article V (Publication of Treaties and Agreements) he provided for the filing of copies of treaties with the Secretariat of the League of Nations. This was perhaps the first time that the idea of the registration of treaties, now embodied in Article 18 of the Covenant, had been brought forward.[2]

At this time Lansing had written another paper, a summary of the arguments in favor of a negative covenant instead of the positive guarantees of Article 10. It may be that this memorandum was handed by Lansing with his six Articles to Wilson on January 7. It was called "Memorandum as to Form of International Agreement to Prevent Infringement upon Territorial and Political Rights" and read as follows:

> There are two forms of agreement which may be employed in effecting a union of the nations to prevent aggressions and international wars.
>
> One is a joint guaranty of the parties to preserve the territorial integrity and political independence of every party to the agreement.
>
> The other is a covenant, several rather than joint in nature, not to violate the territorial integrity and political independence of any party to the agreement.
>
> The first form binds a party to do a certain thing; the second form binds a party not to do a certain thing. The first requires action if necessary; the second requires inaction.
>
> Under the positive guaranty the parties would be bound, under certain conditions, to employ coercion either of a martial or of a commercial character.
>
> Under the negative covenant the violation of its undertaking by one of the parties would be self-operative, constituting an unfriendly act against all other parties, since the offending party would assume a right relinquished by others. It could be provided that the abrogation of treaties and the severance of diplomatic and consular relations should follow as a matter of course,

[1] For the text of these four Articles, see Lansing, *op cit.*, p. 62 *sqq.*

[2] Since this was written, I have seen a British Foreign Office Document of November, 1918, by Professor A. E. Zimmern, which contains a similar suggestion.

and the necessity of positive action for the restoration of rights violated left discretionary with the parties in council assembled.

Opposition to the positive guaranty has appeared in various quarters at home and abroad. Governments in general appear loath to bind their countries to definite action which may necessitate the use of their armed forces or compel an interruption of their commerce and trade. Numerous objections have been raised, some valid, some invalid, and these objections are seized upon and used by those who disbelieve or are hostile to a League of Nations.

In the United States the positive guaranty is also opposed for national reasons. Its opponents declare that the treaty-making power cannot take from Congress the war-making and commerce-regulating powers delegated to it by the Constitution; that to agree to joint coercion of an American republic would permit an interference with American affairs by European nations and destroy the Monroe Doctrine and Pan-Americanism; and that to bind the United States to unite in coercive measures would be violative of the traditional policy of the United States to abstain from "entangling alliances" with European governments. There can be little doubt but that these arguments have won many supporters in Congress and among the people at large.

The negative covenant, which would seem to be effective in reaching the end sought, has internationally the advantage that no power could give a satisfactory explanation of refusing to make it. It has also the same basis as the so-called "Peace Treaties" in its self-denying character, to which most nations are parties.

From the purely American opposition it removes the argument of unconstitutionality, of infringement of the Monroe Doctrine and Pan-Americanism, and of any abandonment of abstention from foreign alliances.

This paper seemed to me to be an excellent statement of the arguments against the positive guarantee of territorial integrity and political independence; and on January 6 I had told Mr. Lansing that my own views were in accord with what was said in it. My expressed reasons for favoring a negative covenant rather than a positive guarantee were that I advocated, as I then said, an explicit recognition of the Monroe Doctrine; and I was not in favor of having guarantees of Latin-America made by non-American Powers.

This attitude of mine may perhaps seem inconsistent with the position which I took in support of Article 10 of the Covenant in the discussions which later raged about that Article in the United States; so perhaps I should say something as to my views, though, as I think, they may be of little importance.

The bogey of inconsistency is nothing to me; and I never heard of anyone who was always right except the Sheriff of Nottingham; and as the tale is told he found it very boresome.

I did not agree with either Wilson or Lansing regarding the vital necessity of the inclusion or the exclusion of the guarantee which became Article 10. Wilson thought that its inclusion was vital, Lansing thought its exclusion was vital, and I thought they were both wrong.

The idea of a League of Nations is an idea of universality and of peace. In 1919 it was a wholly untried idea. I believed in it, I thought it would work, but no one could then have been dogmatic as to its practicability, for it had never been tried. I did not see how any one could oppose the idea unless he said that he was omniscient and *knew* it could not work. If it *might* work, if it *might* end war, that ought to be enough for anyone; but I thought that the idea not only might, but would succeed.

Now the idea of war and the idea of a League of Nations are antithetic ideas. To suppose the existence of a League of Nations and at the same time a war between its members is to suppose an unreal impossibility. Of course, I am speaking of serious things. Haiti and the Dominican Republic might, I suppose, go to war and a League go on. But a world war, a war of Great Powers and a League of Nations of these same Powers with the rest, are contradictory in their essence.

So any League of Nations must include Article 10 as a reality, whether or not it includes it in words. If you do not end aggressive war, there is no League of Nations. If there is a League of Nations, you end aggressive war.

So any League *meant* Article 10, and the question as to the Covenant was whether you should *write* Article 10 or not.

I would have left it out if I could, although I thought it mattered little in reality.

My original suggestion in the Draft Agreement for an Association of Nations which I submitted to Colonel House, was to have a positive guarantee and an unlimited right of withdrawal. The two thoughts are intimately connected. A guarantee that can end at any moment is not a very alarming form of obligation; but it has a high moral value.

The arguments of policy on both sides were strong. Sentiment in the United States and Canada is and was in 1919 against a "commitment." Now (not then) there is a good deal of that sentiment in Great Britain. The false and fantastic vision of

American (or Canadian or Brazilian) mothers praying for their sons in the Balkans was as real to many uninformed minds as a movie. On the other hand was the problem of the security of France and other countries. Even Article 10, with its very limited obligation (much more limited legally than generally supposed or stated) was certain to be regarded by the French as not enough.

The whole question was one that has remained to trouble the world; like Wilson, I thought that with a League it would be answered. So I was in favor of the Covenant with Article 10, and in favor of the Covenant without Article 10. The League was to be the salvation of mankind, and no form of words, no absence of a phrase, would lessen my devotion to its ideal or my belief in its reality.

Before coming to the important discussions which took place prior to the first meeting of the Commission on the League of Nations, I should first refer to still another American draft, one prepared by Dr. James Brown Scott and myself. The circumstances which led up to it were these; at the direction of Mr. Lansing, Dr. Scott and I drafted during the last days of December, 1918, what was called a Skeleton Draft Treaty. That paper, which was finished on December 31, was an elaborate enumeration of subjects which the Treaty of Peace might cover, under various heads and subheads, with some comments as to Signatories, etc. On January 3, 1919, Mr. Lansing directed the preparation of a Draft Treaty along the lines of this Skeleton Draft. A beginning was made of this really monumental job; but for various reasons it was never completed.[1] However, the first part of this Draft Treaty as we had sketched it out, after a preamble and certain formal clauses, was an Agreement for a League of Nations and this part of the draft was finished on January 8 and submitted the next day.

In lieu of printing this paper it will be sufficient to summarize some of its provisions. Somewhat elaborately, it incorporated the principles of the so-called Bryan Peace Treaties so as to make them of general application as a method of adjusting international disputes. There were provisions for annual meetings of the Powers generally and also for meetings of a smaller group of Powers, somewhat similar to the existing Assembly and Council, although in this draft the larger body was called the Council and the smaller one the Standing Committee. Lansing's idea of a

[1] See Lansing, *op. cit.*, p. 106 *sqq.*

negative covenant regarding territorial integrity and political independence was included and also a Monroe Doctrine clause. There were clauses for the publicity of treaties similar to those which were in my earlier Declaration for Open Diplomacy and also a clause from my earlier draft that the Assembly should "from time to time consider and recommend to the respective Member Powers for approval, declarations of rules and principles of the law of nations"; and there was a general and unlimited right of withdrawal.

There was nothing specific in this draft regarding a Permanent Court of International Justice. This omission, however, is not significant, for in what I have above called the Skeleton Draft of Dr. Scott and myself there was a subsequent heading as follows: "Hague Conventions and other International Agreements: (1) Status; (2) Amendment." It was naturally under this heading that we intended to consider the question of a Permanent Court and we never came to it.

To follow in the Treaty this draft Agreement for a League of Nations and really as a part of it, Dr. Scott and I, in collaboration with Professor A. A. Young, prepared a Declaration for Equality of Trade Conditions. The basis of this paper was the Draft Declaration on the subject which I had previously written and submitted to Colonel House,[1] but my draft was somewhat recast and expanded. I feel that this paper is of sufficient interest to be included in this collection. It will be found in Document 4. I do not comment on it further than to call attention to its marginal notes. Also as part of that Document is the British Draft Convention on the same subject, which was not seen by me until January 24. The comment of Dr. Young on the British draft is appended to it.

[1] See p. 19 *sqq.*

CHAPTER III

THE SMUTS PLAN

The proposals of General Smuts, which had such a profound influence on President Wilson, were contained in his well known paper dated December 16, 1918, called "A Practical Suggestion." The original form of the paper (Document 5) is now somewhat inconvenient for comparative reference as the draft Articles are interlarded with the comment; this argument or comment of General Smuts, which surrounded his textual proposals, is written in a moving and appealing style; tending indeed to disarm criticism of the text of the Articles suggested.

My own reaction at the time to the paper of General Smuts is to some extent indicated in a memorandum of "Summary Observations" on the Smuts Plan, which was dated January 13, 1919, and then delivered to the American Commissioners over the signatures of Dr. Scott and myself, as follows:

> This paper is drawn in very moving language and is very beautifully written. Its specific provisions are striking both in regard to what they contain and in regard to what they omit. A few of these points will be noticed:
>
> (a) Almost the whole discussion is of Europe (including Russia and Turkey).
>
> (b) Under the express provisions of (2) and (3) Italy would receive no addition to her territory whatsoever. (Presumably the effect of the language used was not noticed.)
>
> (c) Under the provisions of (2) and (4) there would be intervention in Russia by all the world.
>
> (d) By the text of the argument, the German Colonies are to be disposed of "on the principles . . . laid down in the Fifth" of the Fourteen Points. The specific proposals contain no mention of them in connection with the League of Nations, Equality, or the Open Door.
>
> (e) A mandatory of the League, say Great Britain in Mesopotamia, could act as it pleased there, if two other Powers on the Council refused to disapprove, say for example Japan and Portugal. (12).

(f) The functions of the Council are described in language which is so broadly vague as to mean almost anything. (14a).

(g) Under (15) to (17) conscription is abolished but there is no mention of naval armaments.

(h) Under (17) if Chile has a munition factory so must Argentina and Peru or be defenseless.

(i) There is no provision as to how it shall be determined whether a covenant under (18) is broken or not, in the event that one Power contends that it *is* broken and the other contends that it is *not* broken.

(j) The provision (19) that the United States shall be *ipso facto* at war under certain conditions subsequent, is, in our opinion, one which would, under the United States Constitution, be void if contained in a treaty of the United States.

(k) We have a similar opinion as to the provision in (19) to the effect that the size of the naval or military contribution to be made by the United States in an *ipso facto* war might be determined not only without the consent of Congress but even against the decision of the United States.

(l) Words having a technical legal meaning are used with an apparent disregard of their precise effect, e.g., "jointly and severally" in (18).

(A covenant by A and B by which they "bind themselves jointly and severally not to go to war" would be broken by A, if B went to war with C.)

The twenty-one Articles of Smuts may now be examined in the light of the Phillimore Plan which Smuts had before him, and alongside of the Covenant as it resulted.

Smuts commenced with the thought that the primary and basic task of the Peace Conference was to set up a League of Nations. This first Article was one with the purpose of which Wilson was naturally wholly sympathetic and the decision that the Covenant should be an integral part of the Treaty of Peace became embodied in one of the earliest resolutions of the Conference.[1] Following this thought came the proposals of Smuts about the Mandates system, contained in eight of the twenty-one Articles (2 to 9), to which nearly a third of his argument was devoted. I shall take up these proposals more in detail in connection with the Mandates system of the Covenant.[2] It is sufficient to say here that Smuts did not envisage Mandates as applying to the German colonies in the Pacific and in Africa at all;

[1] See Chapter VIII.
[2] See Chapter IX.

these were left outside of the idea of Mandates being, as Smuts said, "inhabited by barbarians." Smuts gave some passing acclaim and support to the formula of "No Annexations"; but did not think that this formula applied to the German colonies. Of course, he said, they should be separated from Germany and, as they were to be outside the Mandates system, the obvious inference or conclusion was that German South-West Africa should become a part of General Smuts' country and German New Guinea a part of Australia and so on. The legal ability and political ingenuity of Smuts were strikingly shown in this program put forward in advocacy of "No Annexations."

To the organization or constitution of the League, as Smuts called it, he devoted five Articles (10-14). There is no doubt that here the ideas of Smuts made a real advance toward the final solution. Every plan for a League of Nations necessarily envisaged a general conference of all the members of the League under one name or another, the Assembly as we now know it. The Phillimore Plan, the House Draft and Wilson's American Draft all contained such provisions and indeed it would be difficult to draw any scheme for a League of Nations without them. The idea of a smaller representative body to meet more frequently had been suggested in various quarters and was, so to speak, in the air. While not in the Phillimore Plan or in the House Draft or in the Wilson American Draft, it was suggested in the French Plan; it was embodied in the draft which I had submitted to Colonel House, where I called the smaller body the "Council"; it was in the draft of Dr. Scott and myself where it was called a "Standing Committee" of Seven Powers; and it was in Lansing's Articles, where it was called a "Supervisory Committee" of five.

According to Smuts, the League was to consist of a General Conference and a Council, with Courts of Arbitration and Conciliation; the Council, being "the Executive Committee" of the League, was to be composed of representatives of the Great Powers "together with the representatives drawn in rotation from two panels of the Middle Powers and minor States respectively"; and group representation was also suggested as possible. This differed from the Cecil plan, which will be mentioned later, in that Lord Robert Cecil [1] thought the Council should be composed of the Great Powers only; and it differs from the plan of the Covenant, in that the Covenant, in giving the

[1] Now Viscount Cecil of Chelwood.

Great Powers membership in the Council, puts together all the other Powers as one class from which the remaining Council members are chosen.[1]

Among the functions of the Council, aside from control of matters relating to Mandates and administration of property of an international character, Smuts put these:

> To formulate for the approval of the Governments general measures of international law, or arrangements for limitation of armaments or promotion of world peace.

Into the question of disarmament Smuts went in some detail (Articles 15-17). Here his solution was not entirely a happy one, perhaps because he very acutely observed the enormous difficulties of the problem; indeed in his argument he suggested questions which in 1926 were to trouble the technical sub-committees of the Preparatory Commission of the League of Nations on Disarmament. So in his three Articles Smuts proposed two impracticable and insufficient measures, namely, the abolition of conscription and the nationalization of munition factories; he confessed failure as to any general limitation of armament, saying (Article 16): "The limitation of armaments in the general sense is impracticable." With these measures he advocated that the Council should fix the members of the respective militia or volunteer forces of the members of the League and should conduct an international inspection of the nationalized munition factories.

The remaining Articles of Smuts' plan (18 to 21) regarding the settlement of international disputes were taken almost bodily from the Phillimore Plan, substituting the Council of the League, the smaller body, for the General Conference or Assembly as a tribunal of enquiry and recommendation. There is hardly a phrase in these four Articles of Smuts that is not in the draft of the Phillimore Committee; thus Article 18 of Smuts is almost exactly Article 1 of the Phillimore Plan; Article 19 of Smuts is substantially Article 2 of the Phillimore Plan; Article 20 of Smuts is almost literally Article 3 of the Phillimore Plan; and Article 21 of Smuts is a combination and rewriting of Articles 4, 6, 8, 9, 10, and 11 of Phillimore; and, as I have pointed out previously, these provisions of the Phillimore Plan and the four

[1] With the present enlarged Council of fourteen Powers, there is in effect some modification of this principle.

Articles of the Smuts plan which followed them are very largely incorporated in Articles 12, 13, 15 and 16 of the Covenant.

I first saw General Smuts' paper on January 1, 1919, and with it there was handed me the first draft [1] of Lord Robert Cecil's proposals. A later draft of this paper is Document 6, where the changes from the earlier draft are shown.[2]

This preliminary memorandum of Cecil was in the form of an outline description of the League. It contemplated a quadrennial meeting of the General Conference (Assembly), an annual meeting of the Great Powers (Council), with special conferences when necessary. The importance of the work of the Secretariat in connection with international administrative bodies and international commissions was to some extent foreseen. The possibility of a Permanent Court was in the mind of the author and it was thought that the Interparliamentary Union might develop into a periodical congress of delegates of Parliaments which "would thus cover the ground that is at present occupied by the periodical Hague Conference"; and the provisions for the settlement of international disputes were in substance those of the Phillimore Plan.

The memorandum definitely suggested Geneva as the Seat of the League, the first time that this suggestion appeared at the Paris Conference. In the later draft [3] of this paper of Cecil, the phrase suggesting Geneva was omitted; but there is no doubt that the British were sympathetic with the idea of Geneva from the beginning.

One important difference between the plan of Smuts and the memorandum of Cecil was in the composition of the Council. Cecil would have limited this to the Great Powers, while Smuts had proposed a minority of other Powers one less in number than the Great Powers.

A large part of the Smuts plan was devoted to his ideas of Mandates; in the Cecil memorandum there was no mention of Mandates directly, although an African Commission was spoken of, implying perhaps some international supervision over the German colonies in Africa, which were outside of the Mandates in the Smuts plan.

The views of General Smuts were expressed as coming from him alone. The proposals of Lord Robert Cecil were also per-

[1] This draft had been circulated to the War Cabinet on December 17, 1918.
[2] The later draft is headed "Draft Sketch of a League of Nations."
[3] Document 6.

sonal in a sense. The ideas of the one were not wholly in accord with those of the other. Each of the papers was of very high importance as their respective authors were not only members of the British delegation and statesmen of high rank, but were also to become the British representatives on the League of Nations Commission of the Conference. But neither one of them, not even the Cecil memorandum, was *strictly* an official proposal, put forward by the British Government.

CHAPTER IV

WILSON'S SECOND AND THIRD DRAFTS

On January 10 the Second Draft of President Wilson (for the text see Document 7), his First Paris Draft, was completed. Lansing says [1] that this draft of Wilson was in typewritten form on that day before the American Commission.

While this First Paris Draft of Wilson incorporated textually much of his earlier American Draft (Document 3), there were some radical changes, taken largely from the Smuts plan. The theory of Smuts as to the Council was incorporated by Wilson in his Article 2 and Smuts' proposal for the abolition of conscription was embodied in Article 4. Perhaps the most serious changes from Wilson's earlier Washington draft were in regard to the settlement of international disputes. Wilson had originally provided for obligatory arbitration generally, but in this Paris draft, while retaining some of his own procedural provisions, he took over into Articles 5 and 6 the four Articles of Smuts (18 to 21) providing for reference either to arbitration or to the Council, the recommendation of the latter body not to be of binding force, and also took over with these the sanction of an *ipso facto* war. As I have pointed out previously,[2] the substance of all these provisions appeared originally in the Phillimore Plan.

Six Articles added by Wilson to the original favorite number of thirteen were called "Supplementary Agreements"; the fifth was a clause for "fair hours and humane conditions of labor"; and the sixth provided for equality of treatment of "racial or national minorities," a forecast of the subsequent Minorities Treaties framed by the Committee on New States.

The Mandates provisions of the Smuts plan were included by Wilson in his draft in the first four of these Supplementary Agreements; but Wilson made radical changes here; in general the language of Smuts was retained; but Wilson added a clause permitting the substitution of one Mandatory for another; and he made the Mandates applicable to "the colonies formerly under the dominion of the German Empire," a doctrine which Smuts

[1] Lansing, *op. cit.*, p. 107. See also Baker, *op. cit.*, vol. ii, p. 229.
[2] pp. 9, 37.

had rejected; this was no new idea with Wilson; his views on the German colonies and on various other questions had been explained by him a month earlier, on December 10, 1918, while on his way to Paris. They are set forth in a statement given me by Dr. Isaiah Bowman [1] as follows:

> After a few introductory remarks to the effect that he was glad to meet us, and that he welcomed the suggestion of a conference to give his views on the impending peace conference, the President remarked that *we would be the only disinterested people* at the peace conference, and that *the men whom we were about to deal with did not represent their own people.*
>
> He next mentioned the advisability of not leaving in purely political hands the question of the German indemnity, and went on to say that the matter should be studied by *a commission to determine the just claims of the Allies against Germany,* and that after such determination *Germany should be made to pay.* The President illustrated the difficulties of Allied action in imposing an indemnity by a reference to the Boxer question of a few years ago, and contrasted the attitude of the United States with that of Germany and the other European powers.
>
> As for the form of Poland's government and questions like that of the disposition of Danzig, he would only say that he was in favor of their having *any government they damned pleased,* and that he was for imposing upon them *no other provision* than those which applied to individuals—the important thing is *what a person ought to have, not what he wants.*[2]
>
> The President pointed out that this was *the first conference in which decisions depended upon the opinion of mankind,* not upon

[1] On December 18, 1920. The words in italics are literally from the notes of Dr. Bowman which are mentioned in his letter to me of December 14, 1920, from which I extract the following:

"On the way to Europe in December, 1918, President Wilson called in a dozen Inquiry people and told them his ideas on the Peace Conference and the League of Nations. I was the only one who took notes. These notes were sealed to be opened on Nov. 28, 1920. They are interesting. I know of no other statement which the President made, on the League of Nations, before the Peace Conference opened. His views therefore have historical importance and the notes are, historically, a document of considerable interest."

[2] This last phrase seems to be contradictory of the previous sentence. As to this, Dr. Bowman wrote me as follows, under date of December 2, 1924:

> "The President was making two points, first that he was in favor of letting them have a wide area of liberty in which to play with reference to their form of Government; second, that so far as their outside relations were concerned he also wished to meet them halfway, but in dealing with them he wanted to set up the principle that the nationalistic desires of a particular people could not be always or fully satisfied though he did feel that the Peace Conference could give each nation what it ought to have. In the form in which my memorandum casts his thought there is room for misinterpretation. I hope this explanation makes it clear."

the previous determinations and diplomatic schemes of the assembled representatives. With great earnestness he re-emphasized the point that unless the conference was prepared to follow the opinions of mankind and to express the will of the people rather than that of their leaders at the conference, we should soon be involved in *another breakup of the world, and when such a breakup came it would not be a war but a cataclysm.*

He spoke of the League to Enforce Peace, of the possibility of an international court with international police, etc., but added that such a plan could hardly be worked out in view of the fact that there was *to be only one conference* and it would be difficult to reach agreements respecting such matters; and he placed in opposition to this view of the work of the conference and of the project of a *League of Nations, the idea of covenants,* that is, agreements, pledges, etc., such as could be worked out in *general form* and agreed to and set in motion, and he particularly emphasized the importance of relying on *experience to guide subsequent action.*

As for the League of Nations, it implied political independence and *territorial integrity plus later alteration of terms and alteration of boundaries if it could be shown that injustice had been done or that conditions had changed.* And such alteration would be the easier to make in time as *passion subsided* and matters could be viewed in the light of justice rather than in the light of a peace conference at the close of a protracted war. He illustrated his point by the workings of the *Monroe Doctrine,* saying that what it had done for the western world the League of Nations would do for the rest of the world; and just as the Monroe Doctrine had developed in time to meet changing conditions, so would the League of Nations develop. In fact, he could not see how a treaty of peace could be drawn up or how both *elasticity and security could be obtained save under a League of Nations;* the opposite of such a course was to maintain the idea of the *Great Powers and of balance of power,* and such an idea *had always produced* only *"aggression and selfishness and war"; the people* are *heartily sick of such a course* and want the peace conference and the powers to take an *entirely new course of action.*

He then turned to some specific questions and mentioned the fact that *England herself was against further extension of the British Empire.*

He thought that *some capital, as The Hague or Berne,* would *be selected for the League of Nations,* and that there would be organized in the place chosen a *Council of the League* whose members should be *the best men that could be found.* Whenever trouble arose it could be *called to the attention of the Council and* would be *given* thereby *the widest publicity.* In cases involv-

ing *discipline* there *was* the *alternative to war,* namely, the *boycott; trade,* including *postal and cable facilities,* could be *denied a state* that had been *guilty of wrongdoing.* Under this plan no *nation* would be *permitted to be an outlaw,* free to work out its evil designs *against a neighbor* or the world.

He thought that the *German colonies* should be *declared* the *common property* of the *League of Nations and administered by small nations.* The *resources* of each colony should be *available to all members of the League,* and in this and other matters involving international relations or German colonies or resources or territorial arrangements, the *world* would be *intolerable if only arrangement ensues;* that *this* is *a peace conference in which arrangements cannot be made in the old style.* Anticipating the difficulties of the conference in view of the suggestion he had made respecting the desire of the people of the world for a new order, he remarked, *"If it won't work, it must be made to work,"* because the world was faced by a task of terrible proportions and only the adoption of a cleansing process would recreate or regenerate the world. The *poison of Bolshevism* was *accepted readily* by the world *because "it is a protest against the way in which the world has worked."* It was to be our business at the Peace Conference to fight for a new order, *"agreeably if we can, disagreeably if necessary."*

We must *tell* the *United States the truth* about diplomacy, the peace conference, the world. He here referred to the *censorship,* saying that he had arranged in the face of opposition from Europe for the *free flow of news to the United States,* though he doubted if there would be a similarly free flow to the peoples of other European countries; after a considerable effort he had secured the *removal of French and English restrictions on political news.* Thereupon he finished his reference to the frank conditions under which the conference had to work and the necessity for getting the truth to the people by saying that *if* the *conference did not settle things* on such a basis the peace treaty would not work, and "if it doesn't work right *the world will raise hell."*

He stated that we should only go so far in *backing* the *claims of a given power* as *justice required* "and not an inch farther," and referred to a remodeled quotation from Burke: *"Only that government is free whose peoples regard themselves as free."*

The European *leaders* reminded one of the *episode in Philippopolis*—for the *space of two hours they cried, "Great is Diana of the Ephesians"*—to which the President appended in an aside, *"in the interest of the silversmiths."*

The President concluded the conference by saying that he hoped to see us frequently, and while he expected us to work through the Commissioners according to the organization plans

of the conference, he wanted us in case of emergency not to hesitate to bring directly to his attention any matter whose decision was in any way critical; and concluded with a sentence that deserves immortality: *"Tell me what's right and I'll fight for it; give me a guaranteed position."*

The Second Draft of President Wilson, his First Paris Draft (see Document 7), was printed overnight and I received a copy of it on the morning of January 11.

At that time, Colonel House instructed me to make comments on it for him. He also told me that I was to show the plan to no one, as the President had shown it to nobody except the members of the Commission.

The result of these instructions of Colonel House was the preparation by me of an elaborate and detailed paper called "Comments and Suggestions Regarding the Covenant"; as originally printed the paper contained the text of the Covenant in a first column, the comments in a second and the suggestions in a third; and in this collection, in a changed form, it is Document 7.

This paper was made public before the Senate Committee on Foreign Relations in September, 1919.[1]

The witness [2] who produced it, though knowing nothing of its preparation, asserted [3] that it was prepared by Mr. Gordon Auchincloss [4] and myself; this statement is followed by Lansing.[5]

The fact is that the paper was wholly my own work, done without cooperation and, except as I shall mention, without the knowledge on the part of any person as to its contents.

On January 11, I received my instructions from Colonel House for the preparation of these comments, as above mentioned. My paper was completed and printed by the evening of January 18. Thus my comments were written during the seven days from January 12 to January 18, inclusive, and other than my secretary and the printers no one even saw the work during that period, much less had any part in it, except that at lunch with Mr. Auchincloss on January 16, I showed him what I had done up to that time.

[1] Senate Document 106, 66th Congress, 1st Session, p. 1177 *sqq.*
[2] William C. Bullitt.
[3] *op. cit.*, pp. 1176, 1214.
[4] Secretary to Colonel House during the Peace Conference.
[5] Lansing, *op. cit.*, pp. 122, 124.

Mr. Lansing is also mistaken in supposing [1] that my comments and suggestions may have "to an extent" originated with Colonel House. As a matter of fact, House never gave me the slightest indication of the nature of the comments and suggestions that he wanted.

Aside from matters of form and detail, my chief criticisms were of the guarantees of Article 3 and its provisions for territorial changes and of the sanctions of Articles 6, 7, and 10. I suggested the addition of a Monroe Doctrine clause and a paragraph for legislation in international law *ad referendum,* and, following my earlier drafts, some paragraphs for publicity of treaties. I also appended as a suggestion the draft for Equality of Trade Conditions which is part of Document 4.

The omission of any Monroe Doctrine clause in this draft of Wilson was the point where I felt most strongly that it was objectionable; so, while I had written clauses which were designed to meet this and my other criticisms, I also wrote another paper stating in general language my chief objections to the draft and emphasizing particularly the matter of the Monroe Doctrine. This paper, which follows, was not printed with my Comments and Suggestions in Document 7, but it was submitted concurrently:

> By way of introduction to this comment it is not irrelevant, in view of the source of the paper upon which comment is made, to state briefly the attitude and viewpoint of the commentator.
>
> The viewpoint is that of an American, of a Democrat who has sympathetically supported the President in every negative or positive attitude he has taken from the day of his first nomination, and of a lawyer.
>
> The attitude from which the paper is approached is this: the program of the President should be carried out, a just peace should be made, and the foundations for a just peace in the future, in which America should take her part, should be built now. Not one part of the President's program should be abandoned. The fact should be recognized, as the program recognizes it, that America has departed from her traditional policy of the past, that she is now a part of the future of the world, and that hereafter she must be willing to throw her influence, and even, if need be, her force, in favor of peace founded upon justice, as in this war she threw both her influence and her force in favor of justice after peace had gone from the world.
>
> But more than this America should not do, for it is not only

[1] Lansing, *op. cit.,* p. 122.

enough but it is all and more than all that she has promised. That in addition to this America should give up a policy which she has pursued for a century, and pursued faithfully when she was able, with some trifling exceptions—a policy which never had anything ignoble in its results, although it sometimes had something of the baser metal in its motives—is not demanded, and if demanded or if granted would be a wrong to our country and to those countries to the south of us who now rely, because of President Wilson, on our attitude and on our ideals.

America came into this war with altruistic motives and with a thrill of idealism through a hundred millions of people. It was our coming into the war that decided its issue, and it was our troops which would have made a complete military victory if the collapse of the enemy had not rendered it impossible. Our operation in the Argonne was the largest military operation in the war and had more fighting troops engaged in it than all the British fighting troops in France, and as many as all the fighting French troops in France. We have financed and fed the Allies, and we shall have to continue to finance and to feed Europe. Surely, all this is enough; surely, we should not have to throw into the balance a doctrine which has permitted Latin America to develop its own civilization and its own ideals, for even if we criticize the development as slow and the ideals as faulty, we must admit that both the development and the ideals have been those of Latin Americans themselves; and that because of us and because of us alone the country from the Rio Grande to the Straits of Magellan has not been like Africa, a pawn in the diplomacy of Europe.

And nothing need be surrendered to carry through the program of the President. Europe is bankrupt financially and its governments are bankrupt morally. The mere hint of the withdrawal by America by reason of opposition to her wishes for justice, for fairness, and for peace would see the fall of every government in Europe without exception, and a revolution in every country of Europe with one possible exception.

Because of these views the paper considered has been read with the deepest disappointment. The fact that it is largely drawn from British sources is no point against it, but rather the fact that it adopts, unconsciously no doubt, the British Empire point of view which looks for protection by the United States against the future without a thought of changing or improving the past.

There is not a word in the paper regarding freedom of the seas.

There is not a word in the paper about economic equality except regarding German Austria, Turkey, and the German Colonies.

The dependent populations of the world whose sovereignty is in flux because of the war are to be handed over to mandatories

of the League of Nations. Doubtless the United States will get such of those as Great Britain thinks too difficult for herself, and those will lie in the hands of the United States as a bulwark of the British Empire; such as Armenia. The rest will go to Great Britain, to France, and to Japan who, with theoretical responsibilities to the League of Nations, have among them an absolute veto on every act of the Executive Council.

And yet, in the paper, the control of these countries by these three Powers, which as such three Powers have an absolute veto over criticism of their acts, is spoken of as not annexation.

The Monroe Doctrine is abandoned under the provisions of the paper. The differences between the United States and Mexico would have been submitted for mediatory action or recommendation to Great Britain, France, Italy, Japan, perhaps Germany, and either four or five other Powers the majority of which would probably have been European. And under this paper what might be the result and the consequences of the pending dispute regarding Tacna-Arica?

There is not a word in the paper which would prevent an economic boycott of Germany by other European Powers.

The pious hope regarding hours and conditions of labor would be a cruel disillusionment to the masses who have supported and are supporting President Wilson in Italy, in France, and in Great Britain.

Stronger provisions for the protection of minorities were found in the Treaty of Berlin than are contained in the last paragraph of the paper; and the massacres and cruelties of the generation following 1878, in Macedonia and other parts of the Turkish Empire are a witness to their efficacy.

With the abolition of conscription the British fleet would be supreme in Europe and, aside from war with the United States, supreme the world over, not only actually but legally, for France must be Great Britain's ally, *nolens volens,* and one other vote, Japan or Portugal or any other Power on the Council, blocks any action of the world.

With the spirit of the provisions for the arbitration or investigation of disputes between States there can be no quarrel. That any such investigation should be made by a political body such as the Executive Council, with the necessary care and preparation, is almost unthinkable. The United States has gone much farther than any other Power in making treaties with other Powers providing for such investigations, and its twenty treaties on the subject would necessarily be abandoned.

One other point regarding the paper will be noticed generally but not in detail. Any treaty, and above all, such a treaty as that constituting a League of Nations, is a legal document of the

highest importance. The avoidance of all technical terms in such a paper is probably impossible. In any event it should be drawn with the thought that every word in it has a meaning, and that every phrase in it to which two meanings may be attributed is inevitably a subject of dispute in the future. It should further be remembered that in the future it will be examined by the most critical and acute minds endeavoring to make the worse the better cause. The paper in question is a combination of writings not by the same author. From this doubtless result some of the omissions to which attention might be called. Aside from this, however, various of the most important provisions are vague to the point of uncertainty, and certain provisions would, in a treaty of the United States, be void under its Constitution.

14 January, 1919.

Undoubtedly President Wilson had many suggestions, American and others, before him at this time. I have referred to Lansing's and my own. Those of General Bliss under date of January 14 (Document 8), were of some importance; they undoubtedly resulted in certain of the changes which the President made in his next draft [1] (Document 9); for example, the omission of the words "orderly government" in the Preamble; the addition of the words "as against external aggression" in the guarantee clause of Article 3 and the added paragraph to Article 5 fixing the time limit of a year for an arbitral award or a decision by the Council upon a matter in dispute, came directly from the suggestions of Bliss; and it is probable also that the change in Article 4, substituting the Council for the Assembly as the body to prepare disarmament plans, had its origin in the comments of Bliss in this matter.

One notable change was made by Wilson in a few words of Article 6 regarding sanctions. In his First Paris Draft, following Phillimore and Smuts, the opening phrase read:

> Should any Contracting Power break or disregard its covenants . . . it shall thereby *ipso facto* become at war with all the members of the League. . . .

There is no doubt that such a provision, so far as the United States is concerned, is unconstitutional. I had written in regard to it in my comments as follows:

[1] Wilson's Third Draft, his Second Paris Draft. To show the style of the Paris print, Document 9 is in 8 pt. type and reproduces the text page for page and line for line.

> A substantial objection to such a provision is that it would be void if contained in a treaty of the United States, as Congress under the Constitution has the power to declare war. A war automatically arising upon a condition subsequent, pursuant to a treaty provision, is not a war declared by Congress.
>
> It is not doubted that by treaty the United States could agree to *declare* war under certain circumstances. If the circumstances arose the failure of Congress to declare war would be a breach of the treaty; provisions of such nature are frequently found in treaties of alliance, which are within the treaty-making clause of the Constitution.

As I have shown above,[1] Lansing's views went even farther than mine; he would have agreed with the first paragraph above quoted from my comment, but not with the second paragraph. General Bliss had called attention in his suggestions regarding this Article to the "powers which are vested in the American Congress." Now because of some, perhaps all, of these views, Wilson made a slight change in the language in his Second Paris Draft, making a very great change in meaning:

> Should any Contracting Power break or disregard its covenant . . . it shall thereby *ipso facto* be deemed to have committed an act of war against all the members of the League. . . .

The economic boycott was retained and perhaps some corresponding changes should have been made in Articles 7 and 10 of this Wilson draft (Document 9); but the principle that we could not and would not agree to a provision for a war *ipso facto* upon a condition subsequent was accepted.

Baker[2] says that either Lansing's suggestions or mine brought about two of the additions in Wilson's new draft, namely, the Article against secret treaties (supplementary agreement IX) and the Article against economic discrimination (supplementary agreement X). However, Bliss also had suggested a declaration against secret treaties. It is noteworthy that nothing on these subjects is to be found in Wilson's earlier drafts despite his pronouncements for Open Diplomacy and for Economic Equality.

In the new draft (Document 9) the third Supplementary Agreement, one of the Mandates Articles, was expanded; the

[1] p. 24 *sq.*
[2] *op. cit.*, vol. i, p. 230 *sq.*

League was given power to terminate a Mandate; and a provision regarding the expenses of a Mandatory State was inserted seemingly because of the comments of General Bliss. Indeed Bliss here anticipated one of the later objections, that it should be specifically stated that no State "can be made a Mandatory without its own cordial consent;" a clause to meet this came into the Covenant later, but not now; and while in the earlier draft the fourth Supplementary Agreement related only to territories formerly belonging to Austria-Hungary and Turkey, the language was now made general in its application, in accordance with both the suggestion of Bliss and my own criticism.

Other changes made in the text were slight or verbal, but there were various additions; the four Supplementary Agreements numbered VII to X were new. Two of these I have noticed; the others were a clause against religious discrimination, Supplementary Agreement VII, followed by an Article bearing on the Freedom of the Seas, that mysterious slogan that may mean anything but more probably and usually nothing at all. The third of the Fourteen Points had related to this matter; but in the pre-Armistice correspondence it had been expressly excepted from the basis of the negotiations. The clause which Wilson now inserted in his draft contemplated a future international Convention defining the rights of belligerents on the High Seas. Perhaps the inclusion of some such proposal was suggested by Lansing's clause (d) of the first of his six articles,[1] a clause which I had also incorporated in my suggestions (see Document 7).

This Second Paris Draft of Wilson, his Third Draft (Document 9), was completed on January 20; at least I received printed copies of it on the morning of January 21.

[1] See Lansing, *op. cit.*, p. 54.

CHAPTER V

THE PROPOSALS OF CECIL

In the meantime, some British papers had come in. On January 18 there was received a printed "Draft Sketch of a League of Nations" (Document 6) dated January 14, a revision of Cecil's earlier paper.[1] The changes from the former text are noted in Document 6. The most interesting, perhaps, is the omission of any reference to Geneva as the Seat of the League. At the same time came a British draft resolution on the League of Nations for the Conference to pass at a Plenary Session; but I shall tell the story of that resolution in a separate Chapter.[2]

On January 19 Cecil sent to the President a copy of his Draft Convention (see Document 10). I saw the paper that day and received a copy of it the next morning. This paper (subsequently revised somewhat)[3] was one basis of the discussions which I had during the next few days with Cecil.

The Cecil Draft Convention followed the lines of the "Draft Sketch" (Document 6) in regard to the organization of the League; the Council was to consist of the Great Powers with possible future additions; the General Conference was to meet at least once every four years; specific provision was made for separate representation of the British Dominions and India; much consideration was given to various phases of international cooperation; and the draft covers a good many details regarding the Secretariat, etc., while leaving Mandates and various other matters to separate Conventions.

The basis for the provisions of the Cecil draft regarding the settlement of international disputes was the Phillimore Plan[4] which, as I have shown, had also been taken over in substance by Smuts in his draft[5] and by Wilson in his latest draft.[6] But while the Phillimore Plan was the basis of these clauses of the

[1] See p. 38.
[2] Chapter VIII.
[3] For the revised draft see Document 10. The few differences from the earlier draft are there noted.
[4] Document 1.
[5] Document 5.
[6] Document 9.

Cecil draft the latter incorporated various ideas which were new. The most notable of these was that it contemplated the creation of a Permanent Court of International Justice; and it provided that a dispute not submitted to arbitration or judicial decision might be referred either to the Council or to the Assembly and that either Body might submit either the dispute or any particular question involved therein to the Permanent Court, whose decision would in such a case require confirmation by the referring Body; in other words, the draft contemplated advisory opinions of the Permanent Court in cases of dispute pending before the Council or the Assembly.

The sanctions were generally those of the Phillimore Plan, *ipso facto* war, blockade, etc.; indeed the Convention contained a very drastic provision that the operations undertaken in pursuance of it, naval, military and economic, "shall be carried on without regard to any limitations hitherto imposed on belligerent States by any convention or rule of international law."

Furthermore, it is highly important to observe that the draft included, in different language, the Wilson guarantees of territorial integrity and somewhat similarly provided for their modification. The Wilson draft (Article 3) contemplated future territorial readjustments; the Cecil draft (Chapter I, clause 2) contemplated recommendation of changes by the League which if not accepted left the other Members of the League free from "the obligation to protect the territory in question from forcible aggression;" the wording of the two drafts (see Documents 9 and 10) should be compared.

My first discussion with Cecil was in the afternoon of January 21 at the Hotel Majestic. The talk was very frank. It lasted an hour and a half and related to two papers, Cecil's Draft Convention dated January 16 (see Document 10) and Wilson's Second Paris Draft (Document 9), which had at this time been printed. I had on the morning of the same day received copies of it and Cecil had it also. On various points we exchanged personal views, which bound no one. I had no instructions at all.

I made two criticisms of Cecil's paper; the first was of the proposal permitting changes in boundaries (Chapter I, clause 2 of Document 10).

As to this I said it would simply tend to legalize agitation in Eastern Europe for a future war, and that instead of this principle the Swiss idea should be adopted—that the government should be accepted by the minority whatever its race was. Cecil

thought there was a good deal in this point of view, but said that treaties could not be made immutable and that that point should be recognized, and possibly a provision could be made for revision generally, not specifically relating to boundaries, at intervals from time to time. I said that I thought we might agree along these lines.

This stated objection of mine was of course even more applicable to some of the language of Article 3 of Wilson's draft. I never believed in providing in advance for some kind of a tribunal or body charged with the duty of considering changes in boundaries; my comment on the idea (see Document 7) was this:

> That the territorial adjustments made by the Peace Conference will not satisfy all claims, is the only thing now certain about them. Such general provisions as above mentioned will make that dissatisfaction permanent and will compel every Power to engage in propaganda and will legalize irredentist agitation in at least all of Eastern Europe. It is submitted that the contrary principle should prevail; as the drawing of boundaries according to racial or social conditions is in many cases an impossibility, protection of the rights of minorities and *acceptance of such protection by the minorities* constitute the only basis of enduring peace.

and my views on this point generally have recently been expressed at some length elsewhere.[1]

My second criticism was of the *ipso facto* war (Chapter II, clause 12 of Document 10). I said that a war must really be decided upon by the people that are going to fight it at the time, and that, treaty or no treaty, people would not be commited in advance, and that it was no use to try to commit them. Cecil spoke of the modification of this point that had been made by the President (in Article 6 of his Second Paris Draft), namely, that the act of the covenant-breaking Power should be deemed a hostile act,[2] and I said that I thought we could go as far as that.

The two criticisms that Cecil made of the President's paper were: first, as to the Council, which he said was Smuts' plan, but he did not agree with it. He thought that the Great Powers must run the League and that it was just as well to recognize it flatly as not.

The other point was on the representation of the Powers generally, and he said that Great Britain would have to ask for

[1] In chapter VII of my book, *The Geneva Protocol* (1925).
[2] See the discussion of this change, p. 48 *sq.*

representation for the Dominions and perhaps India, and that consequently a meeting of Ambassadors would not suffice.

On the following day, January 22, Colonel House was informed of this talk with Cecil and on January 24 I received definite instructions. House told me that he wanted me to meet with Cecil and to go as far as possible in having an agreement with the British on the basis of the Covenant,[1] supporting it and getting them to accept it where possible, aside from questions where there were legal objections. I spoke to him about Cecil having mentioned twice to me that he had not submitted the plan to the Cabinet, and House said that he would take this matter up so that there would not be an agreement which would bind only us and not the British. He said that if we could get an agreement with the British we could get the Japanese and Italians to assent to it and then the French.

On the morning of January 25 I spent two hours with Cecil at the Hotel Majestic. I told him I was there to see how far the President's scheme could be accepted, as it stood, by the British, and to take note of such changes as they desired, explaining to him that my agreement as to changes was simply an agreement that I would recommend them, and that whether they would be accepted or not was another question. Cecil then took up various features of the changes which they desired. He spoke particularly of the question of representation of the Dominions; of the changes in the composition of the Council so as to make it consist simply of the Great Powers; of the dignity which he wished to give to the office of Chancellor of the League; and of the difficulty of the question of disarmament.

No one but Cecil and myself was present at this meeting. I took some notes regarding points mentioned in various Articles of the Wilson draft and Cecil gave me a list of subjects which were in his mind, which included a Permanent Court of International Justice.

Copies of two British proposals were handed me. One of these was the League of Nations Draft Convention dated January 20. This Draft Convention is, with a few changes and additions, Cecil's earlier draft dated January 16; in this collection it is Document 10 where the differences from the earlier draft are noted. The Notes which accompanied the Draft Convention (and which follow its text in Document 10) show how much the British were thinking of matters of international co-

[1] *i.e.* Document 9.

operation and the significance that they attached to the duties of the Secretary General (then called the "Chancellor") and of the Secretariat. The Notes also contain some discussion of the membership in the League of neutral and enemy Powers. The other proposal was a draft Convention regarding Mandatories with an annexed Note, to which I shall refer later.[1]

Another paper then received contained the suggestions of Lord Eustace Percy. This was an attempt to remodel the British Draft [2] by incorporating in it some of the provisions of the Second Paris Draft of Wilson. I do not reprint this paper in its original form as it refers to the two drafts by paragraphs and lines and would in part be impossible to follow; so I have, so far as possible, drawn up its result, that is, amalgamated the two documents as suggested by Percy, including therein his notes on certain provisions, and print this as Document 11.

I agreed to go over the various papers which I had received and to have a further conference with Cecil at which I hoped to give him my conclusions.

It was on the afternoon of this day that the Plenary Session of the Peace Conference was held which passed the resolution regarding the League of Nations; but I shall tell the story of that resolution later on.[3]

My next meeting with Cecil was on January 27, a meeting for which I had made considerable preparation. Not only had I gone over all the British papers, but I had drafted a paper of notes on each British suggestion and, finally, had redrafted the Covenant of Wilson, without changing its arrangement, by incorporating in my redraft such of the British provisions as I was willing to accept. It is to be remembered that the two drafts at this time were Wilson's Second Paris Draft (Document 9) and the British Draft Convention dated January 20 (Document 10).

With these papers before us, Cecil and I at a meeting which lasted over four hours, came to a substantial agreement, except on certain questions which were reserved, these being particularly the paragraphs relating to the procedure for appeal from an arbitration, mandates, freedom of the seas and economic equality.

The agreement reached with Cecil, so far as it extended, was based upon, and to a large extent was literally in the terms of,

[1] See p. 106 *sqq.*
[2] Document 10.
[3] See Chapter VIII.

my redraft above mentioned; that redraft was in turn derived from the earlier papers, including Percy's amalgamation (Document 11), the language of which to a considerable extent went into what may, for convenience, be called the Cecil-Miller Draft (Document 12). The natural result of these successive amalgamations was, as Cecil wrote later,[1] a highly artificial paper. This was partly due also to the desire to retain, for the time being, the arrangement of the Wilson draft, so that comparison would be the more easy.

After my meeting with Cecil, he and I went over to see Colonel House and conferred with him; Sir William Wiseman was also there. The points upon which agreement had not been had were explained by Cecil to House. There was some discussion of the question of Mandates, a matter which was being elsewhere considered at about this time, as will be seen;[2] House suggested that, after the British Government was committed to the plan, he (House) would take it up with Orlando and that Cecil might take it up with Bourgeois for the French.

Further it was decided that there should be prepared copies of the draft as agreed on with a memorandum of the changes from President Wilson's draft. This work was done that night. The paper which was prepared was entitled "Covenant Incorporating Changes Agreed upon by Lord Robert Cecil and David Hunter Miller, 27 January, 1919" (Document 12).

My report of the same date regarding the agreement reached, made to Colonel House, described it generally as follows:

> I have the honor to report that at the conference which I held today with Lord Robert Cecil pursuant to your instructions, tentative agreement was reached between us in respect of the changes proposed in the Covenant except in regard to those matters which were mentioned to you by Lord Robert Cecil at the conference which you held with him and Sir William Wiseman and myself this afternoon.
>
> The changes proposed by Lord Robert Cecil were extremely numerous, and I trust that it will be found satisfactory that those which I found it necessary to accept are quite limited in number.
>
> It may be said, indeed, that those changes are chiefly connected with the first two articles of the paper. The British wish to make these changes with three ends in view:

[1] See p. 61.
[2] See Chapter IX *passim*.

(a) The representation of the Dominions, which requires special representatives of the members of the League, the Dominions having no ambassadors or ministers.
(b) The limitation of the membership of the Council to the Great Powers and those Powers, if any, which the Great Powers shall subsequently choose to add.
(c) Increased importance of the office of Secretary of the League, who is called Chancellor.

I thought it consistent with your instructions to accept these changes in order to reach agreement, as the two of them first named are regarded by the British as very important, and the third as highly desirable.

While Article III, which is highly important, has been recast, the spirit of the American Draft has, I think, been preserved.

The change in the sixth paragraph of Article V is in substance only an elaboration of procedure.

I think it may fairly be said that the other changes are either verbal or relatively unimportant, for example, Article VII was omitted because its provisions appear to be included in those of Articles VI and X.

Submitted herewith are the following papers:

(1) The American Draft which you handed to me. (Document 9, Wilson's Second Paris Draft.)
(2) The new Draft which incorporates the changes agreed upon. (Document 12.)
(3) A memorandum stating the changes by paragraphs.

The memorandum enclosed in my report to Colonel House was the following summary statement of the changes from the Wilson draft (Document 9) in what I have called the Cecil-Miller Draft. The numbering and arrangement of the Wilson draft had been preserved in the new paper so as to facilitate comparison between the two documents.

PREAMBLE

The words "jointly and severally" are omitted, as some of the agreements are several. This is the only change.

ARTICLES I AND II

These articles should really be considered together. While incorporating various former provisions, they have been rewritten by the British.

The changes are intended

1. To provide for representatives, so as to permit the representation of the Dominions.
2. To limit the Council to the representatives of the Great Powers.
3. To dignify the office of the Secretary, called Chancellor.

In addition, the provision which limited the action of the Body of Delegates to approval of recommendations of the Council is omitted, as the effect of any action of the Body of Delegates, not specifically authorized, is very carefully limited.

ARTICLE II-A

This Article is new. Its provisions are important but relate chiefly to matters of detail.

The final paragraph of this Article, regarding representation of the Dominions, is tentative, *so far as its language is concerned.*

ARTICLE II-B

This Article is new but not important.

ARTICLE III

This Article has been recast, but incorporates generally, it is believed, the spirit of the former draft.

ARTICLE IV

Most of the changes are slight.

In the first paragraph, a few words have been inserted and added.

In the second paragraph, there is a verbal change.

In the fourth paragraph, the words regarding private manufacture of munitions have been omitted.

ARTICLE V

In the first paragraph the words "three months after the" are substituted for the words "there has been an."

In the second paragraph are inserted the words "which the parties to the dispute recognize to be."

In the third paragraph are inserted the words "pending the creation of a permanent court of international justice and in the absence of provisions in any agreement between the parties to the dispute prescribing the constitution of the court to which the dispute shall be submitted." Also in the third paragraph the words "tie vote" are changed to "division" as there might be an uneven number of original arbitrators appointed.

The fourth paragraph and the fifth paragraph are reserved as no agreement was reached regarding their provisions.

The sixth paragraph has been somewhat recast but contains the substance and to a large extent the language of the former draft. The real change is a provision to the effect that either one of the parties or the Council itself may refer the investigation to the Body of Delegates.

In the seventh paragraph the period of twelve months is changed to six months.

ARTICLE VI

A few words have been deleted from the second paragraph. The present third paragraph is new.

ARTICLE VII

Former Article VII has been omitted entirely without substitution in the present draft. It is believed that the effect of the provisions is accomplished by those of Article VI and Article X.

ARTICLE VIII

The third and fourth paragraphs in the former draft have been omitted.

ARTICLE IX

In the first paragraph the following words have been deleted: "to judicial decision or" (occurring twice); and also "and to submit its case to judicial decision or to arbitration".

The word "Delegates" in this paragraph has been changed to "Council".

A printer's error in the last line of the first paragraph has been corrected by inserting the words "a party".

ARTICLE X

The words "decision or" have been inserted in the fourth line of the former draft.

In the eighth line of the former draft the words "that may be necessary" have been changed to "which may be agreed upon in accordance with Article VI".

ARTICLE XI

In the second paragraph the word "cause" has been changed to "course".

ARTICLE XII

The following words have been deleted: "whose government is based upon the principle of popular self-government".

ARTICLE XIII

This Article is unchanged.

SUPPLEMENTARY AGREEMENTS I, II, AND III

These three Articles are reserved.

In lieu of these three articles, the British propose a draft convention regarding mandataries, which requires detailed examination.

Generally speaking, it may be said that this draft convention recognizes two classes of dependent peoples (a) Assisted States, and (b) Vested Territories held upon trust.

In respect of the "Vested Territories", while adopting some of the principles laid down in Supplementary Articles I, II, and III, the British Convention gives less control to the League and more to the mandataries.

IV

This Article is unchanged.

V

This Article has been slightly changed in language and expanded.

VI

This Article is reserved.

The British suggest the omission for the present of this Article until the specific provisions to be contained in the territorial treaties can be considered.

VII

This Article is unchanged.

VIII

This Article is reserved.

IX

This Article has been somewhat recast.

X

This Article is reserved.

In lieu of this Article the British propose a draft convention regarding equality of trade conditions, together with a draft convention for freedom of transit and an annex to these conventions.

Detailed analysis of these papers is required before they can

properly be compared with the principles of Supplementary Article x.

27 January, 1919.

Particular attention should be given to the points which were "reserved" in the agreement between Cecil and myself. They included the provisions of Wilson's draft (Document 9) regarding an appeal from an arbitration [1] and thus directly concerned a clause for a Permanent Court of International Justice, which Cecil wished to substitute for the appeal paragraphs; the question of Mandates,[2] which was elsewhere decided; the question of Minorities,[3] which finally went to the Committee on New States; the question of the Freedom of the Seas;[4] and the question of Economic Equality.[5]

After having received and examined this combination draft (Document 12), Cecil wrote me on January 29 as follows, calling the paper "your" (my) draft:

> I return your draft with a few red ink suggestions—mainly verbal. On re-reading it I am struck with the very artificial character of its drafting—the result, in part, of successive amalgamations. Before it can become an international document its form would naturally have to be entirely re-cast. In particular, I should wish to see it begin with a statement of the general purposes and functions of the League such as was contained in the British draft convention. Further, in some form or another we must deal with Transit, Trade Equality, Arms traffic, Mandatories, etc. Subject to these observations, I am in agreement with the substance of the draft and think it should form the basis of our discussion with our Allies. . . .
>
> I have tried an appeal suggestion as you will see.

The "red ink suggestions" mentioned in this letter were made on a copy of Document 12. They were in part suggestions of changes in the language and in part marginal notes. I have indicated them in Document 12. I need only mention here that one of them was to add Newfoundland to the list of Dominions with separate representation in the League.

[1] The fourth and fifth paragraphs of Article v.
[2] Supplementary Agreements I to III.
[3] Supplementary Agreement VI.
[4] Supplementary Agreement VIII.
[5] Supplementary Agreement X.

The "appeal suggestion" in lieu of the "reserved" fourth and fifth paragraphs of Article V of the Wilson draft (Document 9), was for a Permanent Court of International Justice. The importance of Cecil's suggestion in its relation to the clause of the Covenant which provides for the establishment of a Permanent Court will be apparent. Furthermore, the method proposed for the choice of the nine Judges of the Court, while not that finally adopted, may be said to have foreshadowed it to some extent as may be seen from this text of Cecil:

> The decision of the Tribunal of Arbitrators shall be finally binding and conclusive, unless within . . . months any of the parties to the dispute appeals to the Permanent Court of International Justice.
>
> The Permanent Court of International Justice shall have its seat at the Capital of the League, and shall be constituted in the following manner:
>
> Five persons of high judicial standing and known competency in international law shall be nominated by France, Great Britain, Italy, Japan, and the United States respectively.
>
> These five judges shall elect four other persons of high judicial standing and known competency in international law, from among persons nominated by the other states members of the League of Nations.
>
> These nine judges together shall constitute the Permanent Court of International Justice. They shall hold office for nine years, and may be re-appointed.
>
> In case of any vacancy occurring in the Court, the remaining members of the Court shall elect the judge who is to fill it, except in the case of a judge appointed by one of the Great Powers. In that case the said Great Power shall appoint the judge who is to fill the vacancy.
>
> No judge in the Permanent Court shall be removable except by the unanimous recommendation of all his colleagues.
>
> The Permanent Court shall be constituted in the above manner until such time as the States members of the League of Nations agree on some other method of appointing its members.
>
> In the event of an Appeal to the Permanent Court, the arbitrators originally nominated by the parties to the dispute shall become *ad hoc* members of the Permanent Court.
>
> The decision of the Permanent Court shall be finally binding and conclusive without right of appeal.
>
> The decisions of the Permanent Court shall be binding precedents both for itself and for any tribunal of arbitration set up under paragraph ii.

The following "Notes on a Permanent Court" which accompanied the "appeal suggestion" of Cecil contained not only a very sound argument for the establishment of the Court but foretold very accurately "the extremely important and valuable position which the Court would occupy if established" and, even more clearly than the text of the proposal itself, they predicted that the difficulty of finding a method of choosing the Judges, hitherto insurmountable, would be overcome by the scheme of the League of Nations itself, the application of the doctrine of equality of rights of all States being necessarily based on reason and common sense in the one case as in the other:

1. Besides serving as a Court of Appeal in major International disputes, a Permanent Court might fulfil the following functions:

a. It might act as a Court of 1st Instance in disputes arising within the Administrative Unions:

e.g. It would substitute the provisions for arbitration now contained in the Universal Postal Union, in the International Railway Convention, etc.

b. It would serve as a Court of Appeal for the enforcement of the following Conventions:

Arms Traffic.
Equality of Trade Conditions.
Transit.
International Labour Legislation.
Mandate Treaties (prohibited practices).

The first 4 of these conventions are drafted on the assumption that there will be a Permanent Court. Out of all of them there are certain to arise a considerable number of disputes, some of which will involve large and important interests.

c. It might act as a Court of Appeal for all the minor International Courts that will be set up:

e.g. Danube Commission Court.
Sanitary Convention—Consular.
Commissions, etc.
Possibly similar Courts may be set up for the Kiel Canal, the Vistula, etc.

d. It might act as a Court of Summary Procedure, in minor or highly technical cases, or in claims for damages, which States do not wish to submit to the elaborate machinery of Article v. This might be of great practical use.

It seems probable therefore that in normal times the Permanent Court would have work to do. And almost certainly there will be

a great many cases arising out of the Peace Settlement for which an International Court will be required. This was the case after the Congress of Vienna; and if it so happened now, the Permanent Court might very quickly establish for itself an extremely important and valuable position.

2. The difficulty in establishing a Permanent Court lies exclusively in the method of choosing its members. It is objected that it adds contentious matter to the general proposal for a League, and *pro tanto* will damage the League's chances of coming into existence.

This would be true if the small States maintained the attitude they adopted in 1907. They wrecked the plan for a Permanent Court then, but their ground of opposition was a plea of equality of rights which not only is theoretically preposterous, but which is entirely incompatible with the conception of a League of Nations. If they enter the League at all, they must and will abandon the doctrines of Barbosa. There is therefore reason for thinking that they might accept the scheme proposed as at least a temporary solution of the problem of constituting the Permanent Court.

3. Prof. Pollard says that "it was the suppression of private war that fostered recourse to law."

In an exactly similar way, the proposals of the Draft Convention for a League of Nations would foster recourse to international law. The moratorium, by forbidding war for a fixed period, would tend to produce this result; the provision compelling publicity as to the nature and grounds of all disputes would do so even more. States will not withdraw from arbitration issues which ought to go there, when they have the certainty of publicity before them.

But the supremacy of the law in England was only rapidly established after the Wars of the Roses, because there were already Courts of law in existence. At present there is no international Court. Only if a true Permanent Court is established will recourse to international law under the League become the normal procedure of disputes. A permanent Court is the necessary basis of all legal development in international relations.

4. The highest legal authorities believe that a Permanent Court is perfectly feasible, and that it would administer justice with complete impartiality. This is the opinion of Westlake, Pollock, Vinogradoff, Geldart, Oppenheim. If it proved to be right, it would remove the chief ground of objection to arbitration in the past.

CHAPTER VI

THE HURST-MILLER DRAFT

In the evening of January 31 I attended a conference with the President, General Smuts, Lord Robert Cecil and Colonel House, held in the Hotel de Crillon in one of Colonel House's rooms. There was a very free discussion, chiefly between the President and Cecil, of the differences between Wilson's Second Paris Draft (Document 9) and the British Draft (Document 10).

The President spoke in favor of having as the representatives in the Body of Delegates the Ambassadors and Ministers of the Contracting Powers. He said that he had always observed jealousy and feeling about unimportant things when there were two representatives of the same country in one place. Cecil pointed out that the British Dominions would not have Ambassadors or Ministers.

It was agreed that the provisions of the second paragraph of Article 4 of Wilson's draft (Document 9) should be modified in accordance with the Italian view that they could not abolish conscription; and that the language of Supplementary Agreement I would have to be changed in order to exclude territory acquired by Italy.[1]

While I did not know it at the time, there had been a meeting on the previous day (January 30) between the President and Signor Orlando, at which these matters were mentioned. Colonel House and Signor Scialoja were also present. A note of that conversation follows:

> The President asked for Signor Orlando's views on the covenant which had been submitted to him the day before.
>
> Signor Orlando replied that he was in the main in entire agreement with President Wilson, but he had a few technical suggestions to make. He drew especial attention to Article I of the supplementary agreements which, he thought, was open to misconstruction. If the Trentino and Trieste were to be handed over to a mandatory by the League of Nations, it would seriously compromise Italy's dignity.

[1] The language read "peoples and territories which formerly belonged to Austria Hungary" etc. See my comment as to this in Document 7.

The President pointed out that this was far from his mind. In fact, he intended that this question should be settled before the creation of the League of Nations. In other words, the Trentino and Trieste had, as far as he was concerned, already been ceded to Italy. He said that the reason why he had drafted the paragraph in this form, was because Yugo-Slavia might be divided into one, two or three States. He was prepared to admit two Yugo-Slav States to the League of Nations but, if it were found advisable to separate them into three parts, he would prefer to place the more unformed and less developed of the new States under the mandatory of the League of Nations.

Signor Orlando thanked the President warmly for this explanation but he nevertheless recommended that the language of Article I be altered.

This, the President promised to do.

Signor Orlando drew attention to another reason for not postponing too many of the settlements until the creation of the League of Nations. He said the Czecho-Slovaks and the Poles might decline to compose their differences in Silesia if hope were held out that the controversy could later be referred to the League of Nations.

The President then explained why he proposed that the General Court should be composed of the resident diplomats in one of the smaller capitals rather than of special delegates; if special delegates were appointed, there would surely be jealousy between them and the resident diplomats. In a small capital, a resident diplomat would have leisure to devote a portion of his time to the work of the League of Nations. This might not be the case in a large capital.

Signor Orlando said that these remarks had convinced him absolutely. In fact, he added that the experience of the last few days had satisfied him that a large capital was not a good place in which to hold a Peace Conference.

Signor Orlando did not find the idea of giving three votes the power of veto upon any action of the Council practical. To illustrate his meaning he gave the case of an internationalized railway: supposing that a State, through which this railway passed, imposed exorbitant tariffs and refused to alter them at the request of its neighbours, all action could be paralyzed if three adverse votes prevented the Council from reaching a decision.

The President admitted that this might take place but he said that, as there could be no resort to arms before a delay of one year, public opinion would have time to reflect upon the gravity of the step.

Signor Orlando then hastily went over the remaining part of the covenant and said that his comments were very trifling, ex-

cept on the subject of the abolition of conscription. He thought that this would work hardship upon the poorer Powers. In other words, rich Powers could afford to pay their standing army well. This would place the poorer Powers at a disadvantage. He did not think the voluntary system would work in Italy. They were already having trouble with their paid carabinieri which demanded higher wages. He suggested that a minimum conscription be allowed to be modelled out after the Swiss system. He also thought that the presence of a large body of trained officers in a country might militate against the President's system as, with trained officers, it would be easy to drill new men rapidly.

The President thought that if the number of officers were limited to the number of troops they could legitimately be called upon to command, this objection would disappear.

Signor Orlando asked what would be the result if all the Allied Powers abolished conscription and the German army remained intact.

The President replied that Germany would be forced to disarm before she could be admitted as a member of the League.

Signor Orlando promised to send an English translation of the Italian text to the President as soon as possible.

Coming back to the January 31 conference, it was further agreed that the provisions regarding the *method* of arbitration[1] and particularly the appeal provisions[2] in Article V of the Covenant were not essential, and that a general provision might be inserted for the creation of a Permanent Court.

It was finally decided that I should meet Mr. Hurst,[3] the British legal adviser, the next day and should, so far as possible, agree with him on a draft, referring to House and Cecil, representing respectively the American and British Governments, any questions which might be impossible of adjustment.

My conferences with Hurst commenced the next day, February 1, and I shall describe them in some detail, as they resulted in the draft which is generally known as the Hurst-Miller Draft, which was the basis of discussion before the Commission on the League of Nations. The text of the Hurst-Miller Draft is Annex I of the English minutes of the First Meeting of the Commission on the League of Nations (see Document 19).

I emphasize the fact that my instructions as to the work with

[1] In the third paragraph of Article v.

[2] These were the fourth and fifth paragraphs of Article v. They had been "reserved" in my agreement with Cecil, as shown above and by Document 12.

[3] Now Sir Cecil Hurst.

Hurst not only came directly from Wilson, but were also quite different from those which I had received regarding my previous meetings with Cecil.

The essential bases of the Hurst-Miller Draft were these: first, the American and British drafts (Documents 9 and 10); then the text to which Cecil and I had agreed, subject to the observations in his letter above quoted [1] (see Document 12) and finally, the understanding reached between Wilson and Cecil at the meeting on January 31, which I have just described.

Hurst and I met in the afternoon at three o'clock (February 1) at his office in the Hotel Astoria and went on till half-past seven; we had first some general discussion regarding form and arrangement and the basis of our work together and we agreed that our draft should be put in one series of Articles.

Hurst had previously prepared a revision of his own and, with Wilson's Second Paris Draft and what I call the Cecil-Miller Draft before us, we went over the wording of each phrase of Hurst's revision. I do not now have all of this; but those who wish to go into the details of verbiage may consult Document 13, which shows various Articles as Hurst wrote them.

Part of what Hurst had written was accepted by me *in haec verba,* in part we made changes, and the rest was rewritten at our meetings.

As we progressed we sent copy to the American Printing Office. The work of the printers was so rapid that we had about a dozen articles in proof by the time that we resumed at ten o'clock that evening at my office, 4 Place de la Concorde.

We finished our draft some time after midnight and by four o'clock in the morning the entire proof was at hand. The whole proof was not finally corrected by us till some hours later after a little sleep and breakfast; but the draft was entirely printed by one o'clock in the afternoon of February 2, which was a Sunday.

Here a comparison of what I have called the Cecil-Miller Draft (Document 12) and the Hurst-Miller Draft may be of value.

In Hurst's revision, the Preamble of the Cecil-Miller Draft was not changed; we inserted the words "by the acceptance of obligations not to resort to the use of armed force." This was my suggestion, but it was really due to House, who always wanted some words against war in the Preamble of the Covenant.

[1] p. 61.

Articles 1, 2, 2A, and 2B of the Cecil-Miller Draft related to the Assembly (then called Body of Delegates) and the Council (then called Executive Council) and the Secretariat of the League. These provisions, without any material change in meaning but with the elimination of much superfluous language, had been recast and rewritten by Hurst in five Articles. The result was a very great improvement in form; it made for simplicity, clear statement and brevity. With only trifling changes (none in Article 5), these five Articles as written by Hurst became Articles 1 to 5 of the Hurst-Miller Draft.

Article 4 of the Cecil-Miller Draft related to disarmament. In accord with the understanding between Wilson and Cecil it was to be modified; and I accepted Hurst's draft, which became Article 8 of our draft.

The arbitration and appeal provisions of the Cecil-Miller Draft were Article 5 thereof. Its last paragraph, limiting the time for arbitral awards, etc., to six months, was dropped. Its third, fourth and fifth paragraphs relating to the procedure of arbitration and appeal, the two latter having been "reserved" by me with Cecil,[1] went out, as Wilson and Cecil had agreed. In place of these came the provision for a Permanent Court of International Justice which I accepted as Hurst had written it, Article 12 of the Hurst-Miller Draft. The rest of Article 5 became, in substance and largely in language, Articles 10, 11 (Hurst's draft literally) and 13 of the Hurst-Miller Draft.

The last paragraph of Article 6 of the Cecil-Miller Draft was left out in accord with the omission of the second paragraph of Supplementary Agreement IV, mentioned below. But most of that Article 6, the first three paragraphs, relating to sanctions, became, almost literally, Article 14 of the Hurst-Miller Draft, as drafted by Hurst.

Article 8 of the Cecil-Miller Draft is almost literally Article 9 of the Hurst-Miller Draft.

Articles 9, 10, and 11 of the Cecil-Miller Draft, relating to disputes with or between non-Member States, became, somewhat recast and condensed, Article 15 of the Hurst-Miller Draft.

Article 12 of the Cecil-Miller Draft, condensed, became the first paragraph of Article 6 of the Hurst-Miller Draft. The second paragraph of that Article 6 is almost literally the first paragraph of Supplementary Agreement IV of the Cecil-Miller Draft.

[1] For their text, see Document 9.

Article 13 of the Cecil-Miller Draft became, as drafted by Hurst, almost literally Article 22 of the Hurst-Miller Draft.

Supplementary Agreements I to III of the Cecil-Miller Draft ("reserved" in my agreement with Cecil) [1] and the second paragraph of Supplementary Agreement IV related to Colonies and to the territory of "New States." Some modifications were required, as agreed upon between Wilson and Cecil on January 31. But even before that meeting, the Council of Ten had passed, on January 30, a resolution regarding Mandatories which I discuss later.[2] This resolution was before us. Clearly all of its text, the first two paragraphs for example, could not go into the Covenant. Whether its provisions as to different forms of Mandates, etc., should properly appear in the Covenant or elsewhere in the Treaty or possibly even in separate Mandate Agreements was a question which had not then been thought out. The result in the Hurst-Miller Draft was a rather brief statement of general principles in Article 17.

Supplementary Agreements V, VII, and IX of the Cecil-Miller Draft became literally or almost literally Articles 18, 19, and 21 of the Hurst-Miller Draft.

Supplementary Agreements VI and VIII of the Cecil-Miller Draft relating respectively to minorities and Freedom of the Seas ("reserved" in my agreement with Cecil) [1] went out.

Articles 16 and 20 of the Hurst-Miller Draft were proposed by me. The language is from the British Draft Covenant (Document 10). Article 20 was in place of Supplementary Article X, "reserved" in the Cecil-Miller Draft,[1] relating to the same general question of Economic Equality.

With one exception of the utmost consequence, the foregoing is a tracing, in perhaps tiresome detail, of the evolution of the Cecil-Miller Draft into the Hurst-Miller Draft. I have told how the Cecil-Miller Draft came to be made. My part in it was in accord with my instructions and there had been no dissent from my report on it. Changes of language and of arrangement in the new text were many. Changes of substance, thus far mentioned, were those which Wilson had in advance conceded.

The rest of the story is this: Article 3 of the Cecil-Miller Draft read as follows:

> The High Contracting Powers undertake to respect and preserve as against external aggression the territorial integrity and

[1] See Document 9 for the text.
[2] In Chapter IX. The text of the resolution is at p. 109.

existing political independence of all States members of the League.

If at any time it should appear that any feature of the settlement made by this Covenant and by the present treaties of peace no longer conforms to the requirements of the situation, the League shall take the matter under consideration and may recommend to the parties any modification which it may think necessary. If such recommendation is not accepted by the parties affected, the States, members of the League, shall cease to be under any obligation in respect of the subject matter of such recommendation.

In considering any such modification the League shall take into account changes in the present conditions and aspirations of peoples or present social and political relations, pursuant to the principle, which the High Contracting Powers accept without reservation, that Governments derive their just powers from the consent of the governed.

Hurst proposed in his revision to retain the first of those three paragraphs and to omit the last two. I at once agreed; so that Article 7 of the Hurst-Miller Draft (later the first sentence of the famous Article 10) read simply:

> The High Contracting Parties undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League.

I have stated my ideas on the matter of the two omitted paragraphs as they were expressed to Cecil; and I refer again to the comment which I had written on this Article in Wilson's First Paris Draft.[1] My agreement to omit the two paragraphs was in line with my own views; it did not bind Mr. Wilson; and when the new text came before him, he was wholly free to reject it or to make it his own. So far as this Article is concerned, he accepted it.

[1] See p. 52 *sq.* and Document 7.

CHAPTER VII

WILSON'S FOURTH DRAFT

THE immediate sequel to the Hurst-Miller Draft was this; as I have mentioned, its printing was finished during the afternoon of Sunday, February 2, and almost at once some of the prints were delivered to President Wilson and to Colonel House.

That evening at Colonel House's rooms the President discussed the draft with House and myself. I described generally how my agreement with Hurst had been reached. Mr. Wilson said that he did not like the Hurst-Miller Draft very much, that a great many things had been taken out, some of which he thought were important. He then took his Second Paris Draft (Document 9) as a basis and went over it, making certain changes and approving some others that had been made in the Hurst-Miller Draft. He asked me if it could be recast with those changes and printed and I replied that that could be done in time for the meeting of the Commission on the League of Nations the following day, February 3.

This conference ended some time after ten o'clock and the new draft was printed that night. I received the final prints at the printing office at six A. M. Not more than fifty copies were struck off. This was President Wilson's Fourth Draft or Third Paris Draft and it is Document 14.

Examination of this draft shows that in many respects it is very similar to Wilson's Second Paris Draft. In regard to the composition of the Council I had in my conference with Cecil yielded to his idea of a Council of the Great Powers and had made specific mention of this in my report. The text of both the Cecil-Miller Draft and the Hurst-Miller Draft was in accord with this. The matter was not alluded to at the meeting of January 31. However, in this draft Wilson went back to the ideas of the Smuts plan for the Council contained in his previous draft.

The arbitration and appeal provisions of Wilson's earlier draft were in Article 5. Agreement on these points had not been reached between Cecil and myself, two paragraphs of the Article

having been "reserved." The dropping of these provisions in the Hurst-Miller Draft and the insertion of a general clause for the formation of a Permanent Court were in accord with the understanding between Wilson and Cecil of January 31; but Wilson restored these provisions in his Third Paris Draft in very nearly the same form in which they had previously appeared.

In regard to the Mandates clauses, Wilson took into account, as Hurst and I had, the resolution [1] of the Council of Ten of January 30. His idea was, however, that the text of this resolution should so far as possible appear in the Covenant text itself. Accordingly, the first three Supplementary Agreements of his Third Paris Draft, while embodying some of the earlier language, were largely taken from the text of the resolution mentioned.

In his Third Paris Draft, however, Wilson *did* accept the omission by Hurst and myself of those provisions of the Guarantee Article (later Article 10) which related to changes or modifications of frontiers. In the three Wilson Paris drafts the Article is numbered 3, as it is in the Cecil-Miller Draft; in the Hurst-Miller Draft it became Article 7.

As there is some confusion regarding the various Wilson drafts of the Covenant, a summary statement regarding all of them may well be made at this point.

There were in all four Wilson drafts. The first of these, his Washington Draft, was perhaps never printed until it appeared in Baker's work.[2] In this collection it is Document 3.

Wilson's Second Draft or First Paris Draft of January 10, 1919, has often been printed. In this collection it is in Document 7.

Wilson's Third Draft or Second Paris Draft of January 20, is Document 9 of this collection. This was a revision of his First Paris Draft and I have given a general account of the differences between the two in Chapter IV.[3]

Wilson's Fourth Draft or Third Paris Draft (Document 14) I have described above in this Chapter. It was printed on the morning of Monday, February 3, the day on which the Commis-

[1] For the text of the resolution, see p. 109 *sq.*

[2] *op. cit.*, vol. iii, p. 88.

[3] According to Baker, vol. i, p. 230, Wilson's Second Paris Draft was "apparently not circulated, as it is little known." I think, however, that Wilson's Second Paris Draft was quite generally circulated at Paris; at any rate, as I have shown, it was the subject of most elaborate examination by the British and of much discussion between Cecil and myself.

sion of the League of Nations first met. It was this draft, Wilson's Fourth Draft, which he wished to "serve as the basis of the work" of the Commission.[1]

Now, Wilson's Fourth Draft, which is Document 14, was transmitted to the Senate and printed in the Congressional Record of August 11, 1919;[2] but with the enormous mass of papers that he had before him at that time, President Wilson does not seem to have been entirely clear as to his different drafts, for his letter of transmittal to Senator Lodge under date of August 8, which is also printed in the Record, read as follows:

> I have at last been able to go personally over the great mass of papers which remained in my hands at the close of my stay in Paris, and am disappointed to find that it is in no respect a complete file, the complete files remaining with the American Commission.
>
> You ask for all drafts or forms presented to or considered by the Peace Commissioners relating to the League of Nations, and particularly the draft or form prepared or presented by the Commissioners of the United States. There are no formal drafts in my possession, except that presented by the American Commissioners, and this I take pleasure in enclosing along with the formal Report of the Commission on the League of Nations.
>
> You also ask for all proceedings, arguments, and debates, including a transcript of the stenographic reports of the Peace Commission relating to or concerning a League of Nations or the League of Nations finally adopted, and all data bearing upon or used in connection with the Treaty of Peace with Germany now pending. No stenographic reports were taken of the debates on the League of Nations, and such memoranda as were taken it was agreed should be confidential. The reason for regarding as confidential intimate exchanges of opinion with regard to many delicate matters will, of course, occur to you, and I beg to say that I am following the example of the representatives of the other Governments in making this explanation.
>
> The various data bearing upon or used in connection with the Treaty of Peace with Germany are so miscellaneous and enormous in mass that it would be impossible for me to supply them without bringing from Paris the whole file of papers of the

[1] I make this statement in view of Wilson's letter to me of February 3, 1919, quoted below. Baker, vol. iii, p. 117, in a head-note makes a somewhat similar statement regarding Wilson's Third Draft or Second Paris Draft, which is Document 9 of my collection, and Document 14 of Baker's collection; but Baker does not print or even mention Wilson's Fourth Draft or Third Paris Draft, which is Document 14 of my collection.

[2] Vol. 58 Part 4, p. 3752.

Commission itself, and would include many memoranda which, it was agreed on grounds of public policy, it would be unwise to make use of outside the Conference.

It will be observed that Wilson speaks of this draft as "that presented by the American Commissioners," which it certainly was not. He doubtless had in mind one of his two earlier drafts, either the text in Document 7 or Document 9; the latter, I think.

Thus, there was one Wilson draft in America and three Wilson drafts in Paris; and the confusion as to these three Paris drafts *inter se* doubtless had its origin in the fact that, when printed at Paris, they were all in the same style of pamphlet and size of type and had no distinguishing marks; none of them was dated or numbered, so that the only way to distinguish one from the other was to compare the texts.

When I sent to Wilson his copies of this last of his drafts (Document 14) on the morning of February 3, I wrote him as follows:

> I have the honor to transmit to you herewith ten texts of a draft of "Covenant", printed this morning. About thirty other texts are available.
>
> In lieu of former Supplementary Articles I, II and III, there have been inserted, in accordance with my understanding of your direction, the substance of the provisions of the recent resolution regarding mandatories, adding, however, the first and last paragraphs of former Supplementary Article III.
>
> The remaining changes from the former draft include only, I believe, those which were indicated by you, and a few others which followed from the changes so indicated, or which were made for conformity.

This was his answer of the same date:

> Thank you for the copies of the revised "Covenant". I am deeply indebted to you for a highly serviceable and extraordinarily prompt piece of work and I hope with all my heart that it will serve as the basis of the work of the Drafting Commission.

Wilson's hope was not realized; it was the Hurst-Miller Draft and not his revised Covenant which became the basis of the work to come.

CHAPTER VIII

THE COVENANT IN THE TREATY

On January 25, 1919, a Plenary Session[1] of the Conference of Paris passed the following League of Nations resolution:

> The Conference, having considered the proposals for the creation of a League of Nations, resolves that
>
> 1. It is essential to the maintenance of the world settlement, which the Associated Nations are now met to establish, that a League of Nations be created to promote international cooperation, to insure the fulfillment of accepted international obligations and to provide safeguards against war.
>
> 2. This League should be created[2] as an integral part of the general Treaty of Peace, and should be open to every civilized nation which can be relied on to promote its objects.
>
> 3. The members of the League should periodically meet in international conference, and should have a permanent organization and secretariat to carry on the business of the League in the intervals between the conferences.
>
> The Conference therefore appoints a Committee representative of the Associated Governments to work out the details of the constitution and functions of the League.

This resolution had momentous consequences. Mr. Wilson's determination that the Covenant should be a part of the Peace Treaty was unchangeable. This resolution made that policy of his the accepted policy of the Conference, destined, as the event showed, not to be altered; though there is no doubt that there was a good deal of important feeling on both sides of the Atlantic against making the Covenant a part of the Treaty.

This resolution of the Peace Conference had as its basis a British draft, the date of which is said to be January 15. My copy has no date but I received it on January 18. Later on I shall refer to its text.

[1] The speeches on the League of Nations made at this Plenary Session are printed as Document 15.

[2] Curiously enough, this word is printed "treated" in the Protocol of the Plenary Session and in the minutes and in the Report of the Commission on the League of Nations. There is no doubt whatever that "created" is correct.

There were other proposed drafts of a resolution regarding the League of Nations, none of which influenced the result. I prepared one of some length on January 19, from which Colonel House adopted (with some slight verbal changes) three paragraphs which he then sent to Wilson in this form:

> 1. It is essential to the maintenance of the world peace which the Associated Nations are now met to establish, that a League of Nations be created at the conference with a permanent organization and regular meetings of the members.
>
> 2. The League of Nations should promote the firm establishment of the understandings of international law as the actual rule of conduct among governments and the maintenance of justice and the scrupulous respect for all international obligations in dealings of organized peoples with one another.
>
> 3. The League of Nations should provide for open diplomacy by the prompt and complete publication of all International Agreements.

Mr. Lansing wrote a draft, which he prints.[1] Lansing's view was the opposite of that of Wilson. In his book, the former Secretary of State says [2] that (apparently just at this time) he "began the preparation of a resolution to be laid before the Conference, which, if adopted, would appear in the preliminary treaty in the form of declarations which would constitute the bases of a future negotiation regarding a League of Nations."

In other words, Lansing wanted the Treaty to contain certain declarations of principle to form a basis of subsequent negotiations; Wilson wanted the Covenant in the Treaty.

On January 20 Wilson told Lansing that he did not think that a resolution of the sort that Lansing had in mind "was either necessary or advisable."

We are further informed that at a meeting of the Council of Ten [3] on January 21 Wilson asked Lansing to prepare a resolu-

[1] Lansing, *op. cit.* p. 116 *sq.*

[2] *op. cit.* p. 113 and as to the following discussion generally p. 78 *sqq.*

[3] The meetings of the representatives of the Great Powers during the Peace Conference of Paris were held in different forms. Sometimes the five Great Powers met as the Council of Ten, there being two representatives from each country; sometimes the five Foreign Ministers met and these meetings were usually referred to as the Council of Five. The meetings between the four heads of States, Mr. Wilson, Mr. Lloyd George, M. Clemenceau and Signor Orlando were referred to as the Council of Four; this was the case even during the period when Orlando was absent.

Now, all these meetings, the Council of Ten, the Council of Five, and the Council of Four were called meetings of the Supreme Council. Furthermore, the Supreme Council is to be differentiated as a matter of form from

tion. Now some of the discussions at this meeting have already been published.[1] It was there agreed that the question of the League of Nations should be taken up at the next meeting or, in other words, on the following day.

On that day Lansing completed the draft of his resolution as follows:

> *Resolved* that the Conference makes the following declaration:
>
> That the preservation of international peace is the standing policy of civilization and to that end a league of nations should be organized to prevent international wars;
>
> That it is a fundamental principle of peace that all nations are equally entitled to the undisturbed possession of their respective territories, to the full exercise of their respective sovereignties, and to the use of the high seas as the common property of all peoples; and
>
> That it is the duty of all nations to engage by mutual covenants
>
> (1) To safeguard from invasion the sovereign rights of one another;
>
> (2) To submit to arbitration all justiciable disputes which fail of settlement by diplomatic arrangement;
>
> (3) To submit to investigation by the league of nations all non-justiciable disputes which fail of settlement by diplomatic arrangement; and
>
> (4) To abide by the award of an arbitral tribunal and to respect a report of the league of nations after investigation;
>
> That the nations should agree upon
>
> (1) A plan for general reduction of armaments on land and sea;
>
> (2) A plan for the restriction of enforced military service and the governmental regulation and control of the manufacture and sale of munitions of war;
>
> (3) Full publicity of all treaties and international agreements;
>
> (4) The equal application to all other nations of commercial and trade regulations and restrictions imposed by any nation; and
>
> (5) The proper regulation and control of new states pending complete independence and sovereignty.

On the same day (January 22) that Lansing completed this

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the Supreme War Council, which consisted of representatives of the same four or five Great Powers and, while the Peace Conference was going on, of the same individuals usually.

Beginning with July 7, 1919, after President Wilson had returned to the United States, the meetings came to be called meetings of the Heads of Delegations. Still later, these meetings of the Powers became known as the Conference of Ambassadors.

[1] Baker, *op. cit.*, vol. i, p. 237.

declaration of general principles, which it seems was not then submitted to any one, the Council of Ten met and passed the resolution in precisely the language above quoted.[1] This appears from Baker,[2] although the circumstance is not mentioned by Lansing. Lansing does mention the same resolution as passed by the Plenary Session three days later and speaks of it as "the appointment of a Commission." But that resolution was much more than a decision for "the appointment of a Commission." It stated some of the objects of the League, it mentioned some of the machinery of the League, it referred to the universality of the League, but also decided that the League should be an integral part of the Treaty and that a Committee should "work out the details" of its constitution and functions; while Lansing's draft resolution on the other hand, was one merely for a general statement of principles.

What had happened was that the Lansing idea of keeping the Covenant out of the Treaty had been rejected, first by Wilson on January 20 at the meeting of the American Commission, second by the Council of Ten on January 22 by the resolution which it adopted and third by the Plenary Session of the Conference on January 25 by the same resolution. The contrary course of putting the Covenant into the Treaty had been resolved upon.

In the meantime the Lansing draft above quoted was pending and unpresented. Obviously, as Lansing tells us, its form now required change, in view of the appointment of a Commission; but more than this, the substance required change if the resolution was to be presented. The draft contemplated a declaration of general principles and subsequent negotiations regarding the details, whereas what had been decided was that a Commission of the Peace Conference itself was to consider those details and frame the text of the Covenant; so Lansing, as he tells us, changed his resolution, "after discussion with the other American commissioners" and apparently after January 25. He speaks of the alterations as "some changes of a more or less minor character which it seemed advisable to make because of the appointment of a Commission on the League of Nations at a plenary session of the Conference on January 25."

Not until January 31 did Lansing send his new text to the President, with a covering letter which is not available but which is summarized by Lansing as follows:

[1] p. 76.
[2] *op. cit.* vol. i, p. 238.

. . . saying that in my opinion no plan could be prepared with sufficient care to warrant its submission to the Conference on the Preliminaries of Peace before he left Paris and that unless a plan was reported he would be in the position of returning empty-handed to the United States. I urged him in the circumstances to secure the adoption of a resolution by the delegates similar in nature, if not in language, to the draft which was enclosed, thereby avoiding a state of affairs which would be very disheartening to the advocates of a League of Nations and cause general discontent among all peoples who impatiently expected evidence that the restoration of peace was not far distant.

Lansing does not print the text of the draft that he sent to Wilson on January 31. It was as follows:[1]

The Conference, in order that the Committee appointed to work out the details of the constitution and functions of a League of Nations may be guided in the consideration and preparation of its report, makes the following declarations:

That it is a fundamental principle of international peace that all nations are equal in the rights of undisturbed possession of their respective territories, of independent exercise of their respective sovereignties, and of free use of the high seas as the common property of all peoples;

That the members of the League of Nations should by mutual covenants undertake

(1) To refrain from invading and to protect from invasion the sovereign rights and territories of one another;
(2) To submit to international arbitration all disputes of a justiciable nature which have failed of diplomatic settlement;
(3) To submit to investigation by the League of Nations all other disputes which have failed of diplomatic settlement;
(4) To refrain from hostile acts or the employment of force pending the arbitration or investigation of a dispute;
(5) To abide in good faith by an arbitral award and to respect a report by the League of Nations upon a dispute submitted to it for investigation;

That the League of Nations should have authority to appoint mandatories and to empower them to exercise, under such conditions as it may deem just, sovereign rights over the territories which were formerly the colonial possessions of Germany and also over such new states erected by the Treaty of Peace as are de-

[1] I assume that the copy in my file of January 30 is correct. It bears that date and is headed, Redraft of Resolution of January 23, 1919.

cleared to be international protectorates, it being understood that the interests and wishes of the inhabitants of the territories affected are primarily to be considered in the selection of mandatories and the provisions of the mandates issued, and that in the case of new states the mandates shall provide for the gradual assumption of complete independence;

That the League of Nations should be charged with the consideration and formulation of a plan for a general reduction of national armaments on land and sea and in the air, including therein restrictions upon compulsory military service and upon the manufacture and sale of arms and munitions of war.

Lansing speaks of the differences between this draft and his earlier draft as being "of a more or less minor character." As to this I point out that this draft provides for mutual covenants of the members of the League "to protect from invasion the sovereign rights and territories of one another," a provision going much farther than anything in Article 10 of the Covenant.

Furthermore this later draft has in it a fairly elaborate paragraph regarding Mandates, not mentioned in his earlier draft at all, a system to which Lansing in his book devotes a chapter of criticism.[1]

Indeed it would be a very simple matter to go through the Covenant as it stands and show that, aside from the question of the composition of the Council and the clauses regarding sanctions, most of its important provisions are stated in principle in this draft of Lansing which I have quoted.[2] Certainly this is true of Articles 8, 10, 12, 13, 15 and 22.

The dates show that Lansing's draft, submitted January 31, could not have had any influence as to the decision of January 22 and January 25; its purpose, as its own words in terms stated, was for the work of the Commission itself; for the question of the Covenant had been removed from the consideration of the Council of Ten to the Commission on the League of Nations.

It was the British draft resolution which Wilson changed and accepted; and that British draft was the same as the resolution adopted and above quoted[3] with two exceptions; it did not include in the first paragraph the words "to insure the fulfillment of accepted international obligations" and in the second paragraph it commenced by saying: "This League should be

[1] Lansing, *op. cit.* p. 149 *sqq.*
[2] p. 80 *sq.*
[3] p. 76.

created as part of the Peace" instead of "This League should be created as an integral part of the general Treaty of Peace."

The change in this latter regard to more definite and precise language was undoubtedly due to Wilson. The change made the intention perfectly clear. I do not, however, attach the importance to the wording that Baker does.[1] It is unwarranted, in my opinion, to attribute any subtle purpose to the words "as part of the Peace." They may at least be interpreted as having the same meaning as Wilson's more specific language. At any rate this is to be said: the British record in the matter is clear. They submitted their resolution, a short and simple draft, for Wilson's consideration some days before it came up and no one objected to his change in the language.

Still more erroneous is Baker's idea that there was something Machiavellian in the proposal "to get the discussion of the League out of the Council and into the hands of a special committee." The notion that the proposal of a Committee would tend to delay the Covenant is fantastic; the fact on the contrary was that without some sort of a Commission or Committee there would have been no Covenant at all. The sure way of preventing any Covenant from coming into existence would have been to create no Committee and to go on discussing it in the Council of Ten, a body singularly unsuited for such a debate and which, to mention only two names, neither Lord Robert Cecil nor General Smuts generally attended.

The composition and size of the Committee are other matters to which I shall advert, but the necessity of a Committee must be apparent to every one. Furthermore, there is not the slightest evidence in the record that the President ever had any other view than that of *some* kind of a Committee. Baker says that Wilson "evidently" expected that the League of Nations "would be discussed by the Council itself and its principles, if not its details, worked out by the heads of States as the basis of the settlements." Well, on January 21, at the Council of Ten, Wilson said that he intended to submit the question of the League of Nations at the next meeting; Lloyd George at once agreed and "suggested that the question be taken up at the next meeting and that those present lay down the general principles and then appoint an international committee to work out the constitution of the League." Wilson did not offer the slightest objection to the

[1] See generally in connection with the following pages, Baker, *op. cit.*, vol. i, p. 235 *sqq.*

formation of a Committee. He simply "thought it well that the committee be formed of those men who had already studied the question." Lloyd George then said he would like to have both General Smuts and Lord Robert Cecil on the Committee and suggested that it be formed of two persons representing each of the Great Powers.

There is nothing in this to indicate at all that Wilson did not want a Commission. Indeed, it was he himself who on the next day suggested at the Council of Ten that "an initial draft for the League of Nations be made by a commission appointed by the Great Powers."

If one looks at the situation on January 22, and immediately prior thereto, the matter is, if possible, clearer as to the necessity of some kind of a commission. Mr. Wilson had brought a draft with him; he had changed it in Paris and then revised it further.[1] The British had a draft, which Wilson had studied,[2] but even so, General Smuts and Lord Robert Cecil were not wholly of the same mind as to all details; hardly less important, the French had their proposals; and there was an Italian draft about to be presented, to say nothing of the ideas of other countries, great and small. To suggest under these circumstances that a definitive text could be drawn up except through the instrumentality of some kind of a committee I would have thought impossible except for the fact that it has been suggested.

Certainly if there had been no Commission, Wilson would not have had the draft Covenant that he did have on February 13, 1919.

Assuming a Commission, the next question logically arising, and a question distinct from the necessary existence of such a body, was, how large should it be, or, in other words, how many Powers should be represented on it, with either one or more delegates.

The Commission, as it turned out, was finally composed of 19 members. It is difficult to see how, as a minimum, it could have been composed of less than ten, two from each of the five Great Powers. It does not appear that Wilson thought of a Committee smaller than this. True, he spoke in the Council of Ten of "a small Committee of a few men;" but he was obviously referring to his previous expression "the commission of ten."

Now Baker's idea is that "the other heads of States" (mean-

[1] Printed copies of his Second Paris Draft were available January 21.
[2] See Document 10.

ing Clemenceau and Lloyd George and perhaps Orlando, although later in the same paragraph he speaks of Sonnino, who was not a "head of State") "began by making the new commission as awkward and unwieldy as possible—as nearly a debating society—by adding members to it from as many small nations as possible."

I take direct issue with this statement. The facts of the situation were such that neither Wilson nor Lloyd George nor Clemenceau nor all of them together could possibly have had a Commission to consider this matter consisting only of representatives of the five Great Powers.

The Small Powers were in a state of almost open revolt against the limited representation which was being accorded to them on various Commissions. There were violent discussions on this subject and in regard to no Commission were they more insistent than that which was to deal with the League of Nations. The proposal of the Great Powers that the Commission should consist of fifteen, that is to say, five Small Powers with one representative each in addition to the Great Powers with two each, was not enough for them. They debated it openly in vigorous language at the Plenary Session of January 25 when representatives of eleven countries joined in the criticism. They objected even more strongly at their meeting [1] on January 27; and it was due directly to the insistence of the Small Powers that the Commission was increased to nineteen. Any thought that that Commission could have been constituted without having on it a representative of any one of such Powers as Belgium, Serbia and Poland, to mention only three, was impossible. To leave off every Latin-American country was equally impossible.

The strength of the sentiment of the Small Powers was shown at the Second Meeting of the Commission on the League of Nations on February 4. That Commission was then composed of fifteen members and the question of increasing it to nineteen was brought forward by Hymans and, despite the opposition of Wilson and of Cecil, was pressed to a vote and carried by a vote of nine. The minutes of the Commission say very little on this point; but the discussion is quoted at some length later.[2]

Wilson's suggestion of having a draft first made up by a Commission of the Great Powers and then submitted to a larger Commission on which all the Small Powers would be represented would have been most unfortunate if it had been carried out.

[1] A meeting of the "Powers with Special Interests."
[2] p. 142 *sqq.*

The Small Powers would have defeated it; but it would have been highly inadvisable, even had it been possible. It would have meant two discussions, one successive to the other, with consequent delay and confusion. With that suggestion, if it had been adopted, again Wilson would not have had his draft Covenant on February 13.

What are we to say then of the colloquy in the session of January 22 of the Council of Ten, which Baker reproduces at some length because he finds it "at once so subtle, so significant, so touched, indeed, to the understanding mind, with irony"?

My mind finds in it, on the contrary, a highly common sense recognition by Lloyd George and Clemenceau that the exclusion of Belgium and all other Small Powers from the drafting of the Covenant was an impossibility and a reluctant acceptance of the facts by Wilson, reluctant because of his belief in the undoubtedly sound general proposition that a small committee is more effective than a large one.

To sum up, the event proves everything that I have said. Wilson's proposal of ten members was not defeated by the machinations of Lloyd George and Clemenceau by their proposal of fifteen members. Both proposals were alike over-ridden by the smaller Powers who made the Commission one of nineteen members.

As a tactical matter and in the final result, the fact that fourteen countries were represented on the Commission on the League of Nations contributed very largely to the acceptance of the Covenant generally. It did not prevent speed in the working of the Commission; it did not prevent certain details being worked out by smaller sub-committees, any more than it prevented those personal discussions which always take place outside formal meetings of any sort.

Wilson was right in wanting the Covenant an integral part of the Treaty and in carrying his point as to that; he was mistaken in the kind of machinery desirable for the drafting of the ultimate text; in this regard the suggestions of Lloyd George and Clemenceau were wise. Even those who are labelled "Old" may sometimes, despite the capital letter, put forward a sound and an honest proposal. Finally, Wilson was right in sitting himself as a member and of course as Chairman of the Commission.

There is more to be said on this question of the Covenant in the Treaty. Wilson left Paris on February 14 and returned

from the United States on March 14. Before his departure a very important decision had been reached in the Supreme Council, supported by Wilson and Balfour and finally accepted by Clemenceau. The discussion is to be found in full in Document 16, extracted from the Minutes of the Supreme War Council of February 12.

That decision was that there were to be signed Preliminaries of Peace with Germany, containing only the military, naval and air terms. The question arose because one of the extensions of the German Armistice was about to expire. The decision was made on the afternoon of February 12 and I quote here the resolution of the Supreme Council in full, although it was agreed that only its first three paragraphs were to be presented to the Germans:

> The Supreme War Council agree that:
>
> (1) As a condition of the renewal of the Armistice Marshal Foch shall stipulate that the Germans shall desist from all offensive operations against the Poles, whether in Posen or elsewhere.
>
> (2) The Armistice with Germany shall be renewed for a short period terminable by the Allied and Associated Powers at three days' notice.
>
> (3) Detailed and final naval, military and air conditions of the preliminaries of peace shall be drawn up at once by a Committee to be presided over by Marshal Foch and submitted for the approval of the Supreme War Council; these, when approved, will be presented for signature to the Germans, and the Germans shall be at once informed that this is the policy of the Associated Governments.
>
> (4) After the signature of these preliminaries of peace, Germany will be permitted to receive such controlled quantities of food, and raw materials for the rehabilitation of her industry, as shall be deemed just, having regard to the prior claims of Allied countries, especially those on whose industries Germany had deliberately inflicted damage.
>
> (5) The question of the quantities of food and raw material to be allowed to Germany after the signature of the preliminaries of peace shall be referred to the Economic Council for examination and report.

In other words, the idea was that there was to be a paper called "Preliminaries of Peace" which Germany should sign and which of course would mean another and a later document containing all the other terms.

Baker describes this as a victory for Wilson.[1] He says that he "had thus won his contentions. There was to be a preliminary treaty containing the military, naval and air terms. * * * * * He felt this quick settlement of the military terms a most important move. It fitted in perfectly with his other plans for the peace."

Of course the decision was never carried out. There was no preliminary Treaty. If it had been carried out, it would have been a complete upset of Wilson's program of having the Covenant as an integral part of the Treaty of Peace. Neither Wilson nor apparently any one else had thought through the question of a preliminary Treaty; certainly Wilson had taken no legal advice about it; and certainly, as I shall show, his ideas as to how such a preliminary Treaty would come into force were not wholly definite at this time.

The status of war is a legal status. The status of peace is also a legal status. The two cannot exist together. In other words, if you have a status of war, you can end it only once by turning it into a status of peace. Any subsequent treaty is a treaty between *former* belligerents, not a treaty of *making* peace in the strict sense, although it may have merely terms and conditions of peace in it. So if there had been a preliminary Peace Treaty with Germany containing the military terms, that Treaty would have had to be ratified, it would have had to be accepted by the United States Senate and it would have ended the state of war. Undoubtedly, it was desirable to end the state of war and to bring about a state of peace. But to end it by such a preliminary Peace Treaty would have defeated Wilson's program of the Covenant as "an integral part of the general Treaty of Peace." It would have left the Covenant and a great many other things for future discussion, which was in substance the plan of Senator Knox and the contrary of the plan of President Wilson.

Certainly there may be Preliminaries of Peace followed by a definitive or more definite treaty. There have been many instances of such Preliminaries of Peace; but, as Phillipson [2] says in a chapter which treats exhaustively of the matter, "Preliminaries of peace are, of course, a Treaty."

The idea of having Preliminaries of Peace was very general during the Paris Conference. Colonel House had always favored it. Many of the documents printed at the time had as a

[1] *op. cit.* vol. i, pp. 290, 291.
[2] *Termination of War and Treaties of Peace,* chapter iii, p. 98.

heading "Conference on the Preliminaries of Peace" or some equivalent expression. But any Preliminaries of Peace containing only military terms would not, if such a paper had ever been drawn up, have been accepted by any one of the chief belligerent Allies in Europe. Under the hypothesis, it would have meant a paper which said nothing about Alsace-Lorraine, the restoration of Belgium, reparations, Poland, or the German colonies, to mention only a few headings, and of course which would have said nothing at all about a League of Nations. If Preliminaries of Peace had been written, they would have included much more than military terms.

What Wilson had in mind, as well as the legal situation and its possibilities, came into clear view at a little later date, after his return to Paris. On March 17, at the Supreme War Council, the draft military, naval and air terms were under consideration, and when the so-called "General Articles" were reached, the following remarks ensued, beginning with a very clear statement and request by the French legal adviser:

> M. Fromageot asked for a ruling as to the character of the document that the Conference wished to present to the Germans. If the Convention under discussion were to be considered merely as a set of military clauses for immediate execution by the Germans, and not as a Treaty of Peace, it was to be feared that when the Treaty of Peace was presented to Germany, she would argue that the clauses previously accepted had not been peace conditions, and consequently were open to fresh discussions. On the other hand, if the articles under consideration were to be considered as final peace conditions, then it would be necessary for them to be ratified by the legislators of the various countries, parties to the agreement, and in that case he would suggest that Article 47 be made to read:
>
> > "After the expiration of a period of three months from the date of exchange of ratifications of present stipulations for German laws" etc.
>
> President Wilson remarked that the same question arose in regard to Article 48, and asked that that article be read before the whole question came under discussion.
>
> (Article 48 was then read.)
>
> President Wilson, continuing, said that the paragraph as it now read indicated that these terms would be part of the Armistice. But if they were to constitute the preliminary Treaty of Peace, the wording was not correct. In this matter he found himself in considerable difficulty, and he would be compelled to

seek legal advice. He had assumed that this preliminary Convention would only be temporary until the complete treaty was prepared, and that it would have the character of a sort of exalted armistice, the terms being re-included in the formal treaty. If this preliminary Convention should have to be submitted to the Senate for a general discussion there, he knew from the usual slow processes of legislatures that it would be several months before it could be ratified.

Mr. Balfour expressed the view that the statements made by President Wilson were most important and serious. As he understood the situation, the policy accepted was that a preliminary peace should be made, each clause of which should be a part of the final act, so that by the settlement of the preliminary peace a great part of the final permanent peace would actually have been conquered. It now appeared, however, that the American Constitution made that full programme impracticable.

President Wilson said he did not feel quite sure of his ground, and he proposed that the question be postponed until he could consult the constitutional lawyers, in whose opinion he had more confidence than in his own. For the present, it appeared to him that they would have to use the alternative phraseology proposed by M. Fromageot, namely:

> "After the expiration of a period of three months from the date of exchange of ratifications of present stipulations for German laws" etc.

(Articles 47 and 48 were reserved for further consideration.)

So what was in Wilson's mind was a "sort of exalted Armistice" so far as the military clauses to be imposed on Germany were concerned, these terms to be "reincluded in the formal Treaty." [1] The military clauses had in fact come up [2] in connection with the renewal of the Armistice and it was of their possible inclusion as Armistice terms that Wilson was thinking. There was thus no question at all of a preliminary Treaty in any proper sense of those words; and it seems superfluous to say that Wilson never suggested or thought for a moment that the Treaty of Peace with Germany with its agreements for the future and with its contemplated Covenant would not have to be submitted to the Senate. He had talked about the Senate in his speeches; he had had conferences with the members of the Senate Committee on Foreign Relations; at his conferences with others the attitude of the Senate was often mentioned; allusion to it was made in the

[1] Cf. Baker, *op. cit.*, vol. i, p. 296, who speaks of the "French attempt, which had already been balked by Wilson and Bliss, to crowd peace terms into the Armistice."

[2] On February 12.

meetings of the Commission on the League of Nations, at least from February 6 on. Perhaps nothing was more constantly in his mind than the fact that the Senate would have to act on the Treaty.

I do not think, however, that any one could say that it was outside the realms of possibility to draft a renewal of the armistice with clauses binding Germany to accept for the future military terms therein set forth. Doubtless if such an attempt had been made the legal effect of it would not have been the same as similar clauses in the Treaty of Peace; and very likely, as Fromageot suggested, such military terms would have been regarded as subject to further discussion by the Germans in connection with the Treaty; but they might, I think, have been put into an Armistice renewal for what they were worth.

There is indeed one remarkable precedent which it may be that Wilson had in mind, namely, what was done by President McKinley at the close of the Spanish American war. What was called "A Protocol of Agreement embodying the Terms of a Basis for the Establishment of Peace between the United States and Spain" was signed on August 12, 1898, at Washington, by Mr. Day, Secretary of State, and by the French Ambassador, representing Spain. That extraordinary document was never submitted to the Senate. It was an Armistice Agreement in the sense that it provided for the suspension of hostilities; and there is not the slightest doubt of the constitutional power of the President alone to conclude an Armistice; but that Protocol also provided for the cession of Porto Rico and other islands to the United States and for the relinquishment of Spanish sovereignty over Cuba. Furthermore, it created a *fait accompli,* because it provided for the complete evacuation of Porto Rico, as well as Cuba, by the Spanish. Long before the Treaty of Peace with Spain came before the Senate, Porto Rico was held by American forces and by no one else. The legal right of the Senate to reject the proposed acquisition no doubt remained, but the practical possibility of turning back the clock had disappeared.

In the evening of the day of that meeting of the Supreme War Council, March 17, Dr. Scott and I were called to Mr. Lansing's office. The Secretary of State said that the President had advanced the idea *that afternoon* that the preliminary Treaty of Peace need not be ratified by the Senate.[1] Lansing said he had been shocked at the idea and had told the President that that was

[1] Cf. the remarks of Wilson at p. 88 *sq.*

impossible and the President had said to consult the legal advisers. Nothing whatever was said by Lansing as to the discussions in the Supreme War Council; the general question only was raised, as stated.

My opinion being asked, I said that I did not think the question was debatable. The status of war could not be changed into the status of peace, so far as the United States was concerned, except by a Treaty consented to by the Senate. Dr. Scott was entirely of the same opinion and cited several cases to that effect. Lansing was in accord with our views and instructed us to prepare an opinion on the matter, which Dr. Scott wrote and which we both signed under date of March 18. I include it here, adding that the views which it expressed are beyond question entirely sound:

> The question submitted to the Technical Advisors for their opinion is whether a preliminary treaty of peace negotiated by the President would bind the Government of the United States from the date of its signature or whether it would require the advice and consent of the Senate to its ratification, and only bind the Government upon and from the latter date.
>
> In providing that the President "shall have power, by and with the advice and consent of the Senate, to make treaties" (Art. 2, Sec. 2), the Constitution makes no distinction between classes of treaties which are subject to the advice and consent of the Senate, and in determining whether an instrument is or is not a treaty within the constitutional provision the name given to it is not essential; it must be construed according to its purposes and objects.
>
> As Commander in Chief of the Army of the United States, the President has the authority to conclude an armistice and incorporate therein such terms of a military nature as the exigencies of the situation may seem to him to require. Of such a nature was the "Protocol of agreement embodying the terms of a basis for the establishment of peace" between the United States and Spain signed on August 12, 1898, which was not submitted to the advice and consent of the Senate. This protocol suspended hostilities upon its signature, embodied a promise on the part of Spain to relinquish her sovereignty over Cuba and to cede Porto Rico and certain other islands to the United States, and made provision for their evacuation by the Spanish troops. It provided for the occupation of Manila by American forces "pending the conclusion of a treaty of peace" and for the appointment of "commissioners to treat of peace."

In the case of the Preliminary Treaty of Peace between France and Germany signed at Versailles on Feb. 26, 1871, ratification by both parties, namely the Emperor of Germany and the French National Assembly, was expressly stipulated (Art. x). The same is true of a number of other important preliminary peace treaties (see Phillipson, Termination of War and Treaties of Peace, p. 99).

The declaration of war by the United States Congress on April 6, 1917, created a status of war which may only be terminated by a treaty of peace equally as valid as the law of the land with the declaration of April 6, 1917, and "as in the case of other treaties, a treaty of peace is not definitively binding until the exchange of ratifications; and a state of war in the technical sense continues until the date of exchange" (Crandall, Treaties, Their Making and Enforcement, p. 352, citing several decisions of the Supreme Court).

The legal effect of the protocol between the United States and Spain of August 12, 1898, was judicially passed upon in the case of *Hijo* v. *United States,* in which the United States District Court held that "The protocol and proclamation did not end the war. The protocol worked a mere truce. The President had not the power to terminate the war by treaty without the advice or consent of the Senate of the United States." In confirming this decision, Mr. Justice Harlan, speaking for the Supreme Court, declared that "a state of war did not in law cease until the ratification in April, 1899 of the treaty of peace" (194 U. S., pp. 317 and 323).

It is therefore submitted that a preliminary agreement signed by the President, but not ratified by the Senate, can have no legal effect, so far as ending the war is concerned, and can operate only as a truce; and that if it is desired in the preliminary agreement, by whatever name it may be called, to effect the legal transition from the state of war to a state of peace, this may only be accomplished by submitting it to the Senate for its advice and consent according to the constitutional provision.

Undoubtedly, while Wilson was away from Paris (February 14 to March 14), the idea of separating the Covenant from the Treaty revived, despite the resolution of the Peace Conference of January 25. Just how it revived and through whom is more or less of a mystery of which I shall suggest a solution of my own; but certainly there are some things that had nothing to do with it; and the resolution introduced by Balfour on February 22 in the Council of Ten, directing the speeding up of the work of

the Conference, was not a part of the idea, as Baker supposes.[1]

Balfour's resolution provided that various Commissions which had been considering various subjects should send in their reports by March 8. It certainly was a very wholesome resolution. The work of the Conference had been dragging and in a good many respects was not getting anywhere. The absence of Wilson and the bullet of February 19 which kept Clemenceau in bed for a few days had a tendency to slow things down. The world was insistent not merely on a return to peace but on a decision as to many open questions of the utmost importance.

The text of the resolution relating to the German Treaty,[2] as adopted by the Council of Ten on February 24, was this:

> 1. The Conference agree that it is desirable to proceed without delay to the consideration of preliminary Peace Terms with Germany and to press on the necessary investigations with all possible speed.
>
> 2. The preliminary Peace Terms, other than the naval, military and air conditions, should cover *inter alia* the following points:
>
> (a) the approximate future frontiers of Germany, and the renunciation of colonies and territorial rights outside Europe;
>
> (b) the financial conditions to be imposed on Germany;
>
> (c) the economic conditions to be accorded to Germany;
>
> (d) responsibility for breaches of the laws of war.
>
> 3. In order that the Conference may have at its disposal with the least possible delay the results of the labours of the various Commissions which have been investigating those subjects, it is requested that the various Commissions will send in their reports to the Secretary-General not later than Saturday, March 8th. This will not apply to Commissions set up after February 15th which may be unable to render their final reports at so early a date, but it is requested that in these cases interim reports may be presented dealing with all matters affecting the preliminaries of peace with Germany.

As I have shown, the whole question of some kind of a preliminary Treaty as distinct from a Treaty which was *not* preliminary was in a fog in the minds of nearly everybody who was talking about it. But any kind of a preliminary Treaty *without the Covenant,* whether it included only military terms or whether it included military terms and other terms, would equally have

[1] As to this and the following pages, see generally Baker, *op. cit.* vol. i, p. 295 *sqq.*

[2] There were similiar resolutions adopted, relating to the other Treaties.

been a defeat of Wilson's plan for the Covenant "as an integral part of the general Treaty of Peace."

Furthermore, the resolution of Balfour of February 22 was *not* contrary to the statement of Wilson in the Council of Ten on February 12. I quote one sentence [1] of that statement from the minutes of the Council of Ten:

> But he (Wilson) did not wish that during his unavoidable absence such questions as the territorial question and questions of compensation should be held up.

Baker thinks the Balfour resolution was part of an "intrigue against his (Wilson's) plan of a preliminary military and naval peace" which (that is the "intrigue") would have "indirectly" killed the League or "cut it out of the Treaty." On the contrary the plan of a preliminary military and naval peace would have directly cut the League out of the Treaty and indirectly killed it.

The "extraordinary new resolution" (of Balfour) was merely an attempt to get the work of the Conference on and in shape for its discussion by Wilson on his return.

The notion that the pressing forward of the consideration of other questions hindered or delayed the preparation of the military terms is contrary to reason.

The Commissions working on the matters covered by Balfour's resolution had nothing whatever to do with the military terms. Why should they not get on with their work and conclude it? What day could have been more appropriate than Saturday, March 8, for such of the Commissions as could then report? Wilson was due back on March 14 and it was common sense from every point of view that haste should be made.

My view is the opposite of that of Baker in this matter; he says:

> "Not one word was said in the Council (of Ten) about the preliminary military terms—the most important outstanding business before them—for an entire week" (after February 12).

At that time the military terms were *not* business of any kind, outstanding or otherwise, before the Council of Ten. Of course nothing was or could have been said about them. The military terms had been referred on February 12 to the military, naval and air experts, the only people who could possibly write them, and the first draft of even the military terms proper (as distinct from naval and air) was not circulated until February 28.

[1] This sentence is represented by dots in the quotation of Baker, *op. cit.*, vol. 1, p. 290.

March 1 was the earliest day on which the Council of Ten could consider *any* military terms at all and the naval and air terms were not then ready.

The preparation of these military, naval and air terms was a very difficult technical task, as any one who reads the twenty pages of the Treaty of Versailles that contain their text with its schedules and tabulations, can see; and after they were first drafted, they raised important differences of opinion and were completely changed even in some matters of principle before they were adopted. There was a direct difference of opinion between Foch and Lloyd George as to how the German army should be constituted, by short term service or otherwise. The question whether there could be a distinction between civil and military aviation, to mention only one example, was of great difficulty; discussions about these military terms went on until after Wilson's return and he participated in them in detail and at length in the Council of Ten; and even on March 15 he requested postponement of their consideration till March 17.

Indeed it was not until the latter part of April that the military terms were definitely and finally agreed to, despite the fact that every one considered them urgent. Both Clemenceau and Foch on March 1 asked that decision be reached "without delay." The divergences of view, however, were so important that they could not be reconciled without earnest and prolonged debate. If the military, naval and air terms had been considered to the exclusion of everything else, they could perhaps have been separately presented to the Germans some short time prior to May 7, when the entire proposed Treaty was presented. But I repeat what I have said above that any such separate document (as a preliminary Treaty) would not only have defeated Wilson's plan of the Covenant in the Treaty, but would have been impossible of acceptance by any one.

Going back to Balfour's resolution and the discussions on it in the Council of Ten on February 22 and February 24, it will be seen that various expressions were used: "preliminary peace terms," "terms of peace of a preliminary peace," "final military terms," "final peace treaty" and so on. Even "preliminary conditions" was suggested. No one except Lansing seemed to have any very clear idea in his mind as to what the procedure might or would be; but the common sense view of the matter at that time was well expressed by Balfour at a meeting of the Council of Ten on February 25, where the point under discussion

was the dispatch of General Haller's army to Poland; the minutes read:

> Mr. Balfour was most anxious to hasten the conclusion of the preliminary terms of peace. He had himself moved a proposition with that object in view. He could not, therefore, be accused of hampering the attainment of that object. But when Marshal Foch asked the Conference to defer the sending of a Polish division to Poland until the preliminaries of peace had been concluded with Germany, he evidently underrated the difficulties of the latter task. A discussion with a view to bringing about a preliminary peace could hardly be brought to a satisfactory conclusion unless three or four such questions as the following were first settled, that is to say: financial questions, the question relating to the left bank of the Rhine, the question of Dantzig, etc., questions which could hardly be settled before President Wilson's return to Paris. No doubt other questions connected with the future frontiers of Germany could practically be settled in President Wilson's absence. For instance, the frontiers between France and Germany, the frontiers between Denmark and Germany and the frontiers between Poland and Germany excluding Dantzig.
>
> On the other hand, the Conference could not move a step until the reports of the Allied Commissions, which were now at work on those problems, had been received. Those reports could not, however, be expected before the 8th March next. The Conference would then have a week to consider these reports before the return of President Wilson, and during that time no doubt some spade work could be done. It was evident, however, that, if the dates suggested by him were correct, it would be impossible to have the preliminary terms of peace ready, covering finance, disarmament, future maritime conditions, the question of the left bank of the Rhine, territories adjoining Alsace-Lorraine, Dantzig, etc., regarding which well-informed people held very divergent views. It would be impossible to draft a peace, involving all those questions, at the earliest before the end of March, and even that would be a very sanguine estimate.

A fairer or more reasonable statement could hardly be made. There was work which could be done and which should be done while Wilson was away; Wilson had himself expressed such a wish. There were many questions, however, "which could hardly be settled before President Wilson's return;" the work on these was preliminary to his consideration.

In order that the reader may judge for himself the merits of the Balfour resolution I reprint as Document 17 the entire dis-

cussion on the subject at the Council of Ten on February 22 and February 24.

Reference should be made to one other question regarding Balfour's resolution. Baker seems to think [1] that the resolution should have said something about the Covenant. He says that the resolution provided that the Council should proceed without delay to the consideration of "practically everything except the League of Nations!" But this was *exactly* what the situation demanded at the time. Any reference to the Covenant in the resolution would have been not only impertinent but almost an insult to President Wilson. The resolution referred specifically to the work of the various Commissions. Wilson had been Chairman of the League of Nations Commission and that Commission had made its report on February 14 with a draft Covenant. That draft Covenant had not been definitely accepted by the Peace Conference; but it was before all its members for consideration.

For the Council of Ten in these circumstances to have attempted to do anything or even to say anything about the Covenant in the absence of Wilson, whose return was announced and known, would have been a most extraordinary and shocking thing. It was generally thought, and as the event showed, correctly, that Wilson himself would propose certain changes in the draft. The matter of the Covenant was further advanced in procedure and in form at the time of the Balfour resolution than any other part of the Treaty; and it was the one thing with which the Council of Ten had nothing to do while Wilson was away.

Whatever may have been the origin of the rumour that "the League was sidetracked," the common sense plan of Balfour to speed up the work of the Conference formed no part of any such scheme.

Baker goes so far astray in the matter that, while he considers that the plan of having the military terms immediately completed was Wilson's plan on February 12, he finds that the urgency of Foch on March 3 to proceed with the military terms was a part of the "sharp scheme" to block Wilson; and that Wilson countered on March 15 by "refusing to be rushed into decisions," and by asking "for a postponement" regarding these same military terms.[2] In other words, Wilson's plan was to have military terms drawn up immediately; the urgency of Foch to complete

[1] *op. cit.* vol. i, p. 298.
[2] *op. cit.* vol. i, p. 309, 310.

the military terms definitely was in opposition to Wilson's plan; and Wilson's decision to postpone the consideration of the military terms, so that he could go over them carefully, tended to defeat this opposition. The effort to prove a plot where none existed could not well go farther.

Those who believe that the only explanation of any event at the Peace Conference is to be found in a sort of Sherlock Holmes discovery and exposure of the tangles of mysterious plots and counter plots will of course not accept my conclusions. On the other hand, those who are willing to study the documents and to look at the situation in the light of its realities and legal necessities will, I think, agree with my view, which is this:

Immediately before Wilson's first departure from Paris, in February, he had, without much consideration of details, agreed to a proposal that military terms should be drawn up and presented to Germany at once. The matter was discussed in connection with the renewal of the Armistice and the idea was that the blockade would be raised upon the acceptance of these military terms by Germany.

Let me quote Wilson's own language [1] of the afternoon of February 12:

> . . . He therefore thought it was possible to frame the terms of Germany's disarmament before settling the terms of peace. He was encouraged in this belief by the assurance that the military advisers could produce a plan in 48 hours. It might take more than 48 hours for the heads of Governments to agree on this plan. It was not his idea that the Armistice should be protracted very much longer, but a definite term could not be fixed until the Governments had matured their judgment concerning the disarmament of Germany. Once this point was settled, the Germans could be given short notice to accede to our demands under pain of having the Armistice broken. The main thing was to do this while our forces were so great that our will could not be resisted. The plan he proposed would make safety antedate the peace. He thought that this brought the two views into accord as regards the purpose in the minds of both parties to the morning's debate.

Following this, Clemenceau said definitely that President Wilson was going away and that he would not like to discuss a matter of such importance as these military terms in his absence. Wilson then agreed that "it might not be possible for the Govern-

[1] See Document 16.

ments to be ready in a month." Accordingly, he then suggested an indefinite renewal of the Armistice with notice to the Germans that final military terms would be put forward, saying: "The Armistice would then be ended by the formulation of definite preliminary terms of peace on military conditions."

The resolution which was agreed to and which I have quoted[1] was rather vague from a technical point of view. It spoke of "detailed and final naval, military and air conditions of the preliminaries of peace" and that these were to "be presented for signature to the Germans." Later on it called them "these preliminaries of peace."

The consequences of the carrying out of such a resolution were not in the mind of any member of the Supreme War Council. If they had been, no one would have agreed to it, least of all Wilson and Clemenceau. If the resolution meant what it said or what it seemed to say, it meant a Treaty of Peace with Germany, labelled "preliminary," but still a Treaty of Peace, which contained nothing except military terms or, in other words, from the point of view of Clemenceau, nothing about Alsace-Lorraine *et al.* and from the point of view of Wilson, nothing about the Covenant.

While Wilson was away from Paris, it was very natural that the effect of such a plan should come to be gradually realized and its consequences (if carried out in any such form at all) become at least dimly apparent. A very general notion resulted from this that there was to be some kind of preliminary treaty, saying nothing about the Covenant, that Wilson had agreed to this, as in one sense it might be thought that he had, and that consequently the Covenant was "out of the Treaty."

Such is my explanation, which is at least in line with all the evidence yet available.

The only other light that I can throw on this question of separating the Covenant from the Treaty is to mention the following circumstance: on March 6 Mr. Gordon Auchincloss told me that he had been discussing with Colonel House the question of having the Covenant in a separate treaty so as to concede something to the Senate. My Diary reads: "I expressed an opinion very unfavorable to this and dictated a memorandum about it on my return to the office." The memorandum, which follows, was delivered on March 7:

[1] p. 86.

We are agreed that the Covenant of the League of Nations is an integral part of the Treaty of Peace in reality, whatever it may be in form, and that the Peace itself is one whole agreement including the Covenant for the League of Nations.

The question is whether this integral whole should be drawn in two pieces:

(a) The Peace Treaty containing numerous references of vital importance to the League of Nations;

and

(b) The Covenant of the League of Nations.

The latter course would give to the Senate of the United States the opportunity, or at least the theoretical opportunity, of accepting the Peace Treaty and rejecting the Covenant.

Looking at the facts of the situation it is obvious that the Peace Treaty, that is, the part of the Peace Treaty distinct from the Covenant, would have been agreed upon by the Powers on whose side we have fought, because of the creation of the League of Nations. If it were not for that creation they would insist, and would rightly insist, on a very different peace.

To permit the possibility of the acceptance of those portions of the Peace to which the Allies have agreed only because of the Covenant and at the same time the rejection of the Covenant which is their consideration for the rest of the agreement, would in my opinion be a reproach to the honor of the United States.

If the Peace, including the League of Nations, is an integral whole, as we are agreed, undoubtedly the Senate of the United States may reject it, for that is their right, but if they reject it the state of war will continue *de jure,* and it will then be possible to make a peace satisfactory to the European Powers on whose side we have fought, based upon the essential condition of a policy of isolation of the United States.

But to make a peace which had been agreed to upon the belief that our policy of isolation was ended but which came into effect with the knowledge that our policy of isolation was not ended, would be so unjust as to be difficult of characterization.

I never heard anything more on the subject and on March 14 President Wilson was back in Paris.

CHAPTER IX

MANDATES

ARTICLE 22 of the Covenant [1] provides for the régime of Mandates under the League of Nations.

This Article, in substance and largely in language, is based upon a resolution of the Council of Ten of January 30, 1919.

It is not my purpose to trace the origin of the idea of Mandates or of the term itself.[2] So far as the idea involved the principle that the control of uncivilized peoples ought to mean a trusteeship or wardship under which the interests of the natives themselves should be paramount, it had long been advocated by various writers; and "the interests of the populations" was the phrase used in the fifth of President Wilson's Fourteen Points:

> A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

General Smuts in his Plan [3] had proposed the mandatory system for "territories formerly belonging to Russia, Austria-Hungary and Turkey." The fact that he excluded the German colonies from the application of the system is highly significant. President Wilson incorporated the mandate idea at some length in his First and Second Paris Drafts [4] (Supplementary Agreements I - III). The language of the Wilson Articles here was very largely the language of Smuts; but Wilson made at least two substantive changes of moment. He omitted mention of Russia; and he added, "the colonies formerly under the do-

[1] Various provisions of the Treaty of Versailles, apart from the Covenant, have a bearing on the matter, such as Articles 119 to 127, for example; but these as well as other relevant international agreements, such as the Treaty of Lausanne, are generally outside the scope of my work.

[2] See generally, *African Questions at the Peace Conference*, by George Louis Beer (1923).

[3] Document 5.

[4] See Documents 7 and 9.

minion of the German Empire." So, by the Wilson plan, the "fundamental principles" set forth were applicable to "the peoples and territories which formerly belonged to Austria-Hungary and to Turkey and . . . . . the colonies formerly under the dominion of the German Empire."

No serious attempt was ever made to apply the mandate idea to any territory that had been within Austria-Hungary; indeed such application to *all* of that territory was clearly out of the question. I may refer here to the very interesting explanation which Wilson gave Orlando of the mention of Austria-Hungary in his draft in the conversation which the two statesmen had on January 30.[1] In this conversation Wilson agreed to the omission of Austria-Hungary, as indeed some of his own advisers had previously recommended;[2] and in his subsequent draft (Document 14), the Third Paris Draft of Wilson, where the language followed the resolution of the Council of Ten of January 30, the territorial limitations were thus expressed: "to the colonies formerly part of the German Empire and to those territories formerly belonging to Turkey which include Armenia, Kurdestan, Syria, Mesopotamia, Palestine and Arabia" etc.

It may be well to point out here a fact not generally recognized. People talk about the Peace Conference having "split up the Austro-Hungarian Empire," all of which is nonsense. In truth Austria-Hungary had dissolved not only before the Peace Conference met, but before the date of the German Armistice (November 11, 1918). Separate Governments for Austria and for Hungary, Governments that were bitterly hostile to each other, had been set up in Vienna and in Budapest; and another Government, generally recognized, had been set up by the Czecho-Slovaks at Prague. No Peace Conference, nothing but armed force, could have reunited those three States. Furthermore, the partition of Poland had been *de facto* annulled, Austrian Poland was a part of the new Poland, the Croats and Slovenes had thrown in their lots with the Serbs, and Italia Irredenta was redeemed. For the Peace Conference there remained questions of frontiers of the utmost importance, questions of rights of minorities and perhaps questions of the relations of these successor States *inter se;* but no solution of any of these problems along the lines of the mandate principle was either practical or desirable.

[1] See the note of this conversation, pp. 65 *sqq.*
[2] See Documents 7 and 8.

So from a territorial viewpoint there were here involved the German colonies in Africa, the German islands in the Pacific and the territories to be detached from Turkey. Kiao Chow, for example, was an entirely separate question; also, it was unsettled and destined not to be settled till some years later, just how far the dismemberment of Turkey would go.

From a selfish point of view, the United States had almost no interest in most of the problems presented. Every American would have regarded the acquisition of any territory in Africa, in any form, as a burden. Our interest in Turkey was sentimental only and even sentimentally was substantially limited to Armenia; with the possible exception of Mosul, "the open door" as to Turkey, meant hardly more than a phrase.

In the Pacific our situation was slightly different. Of course New Guinea meant nothing to the United States and we already had a part of Samoa. The only one of the small islands having any commercial value was Nauru, where the private rights, as distinct from the sovereignty, had been owned by the British since before 1914. That the remaining islands should not become naval bases and that we should have privileges for wireless communication in the Island of Yap were about all that, from the point of view of self interest, America could ask.

The dispute that arose in the Conference was accordingly one regarding a principle, rather than a conflict between divergent national interests. The French, or at least the French Colonial Office, wanted to annex part of the Cameroons and Togo; and the three British Dominions interested wanted to annex respectively German South-West Africa, New Guinea and German Samoa.

The British Government, meaning here the Government in London, was in a rather mixed and difficult position. The Colonial office was destined, under one form or another, to have the charge of German East Africa (except the region later assigned to Belgium) and of portions of Togo and the Cameroons; but not only the form of that control, but even the fact of it, was rather small dust in the British balance.

The idea that the acquisition of German East Africa (to take one instance) is a benefit to the acquiring country, a source of great wealth, part of the "spoils of the war" and so on, is a very favorite theme with some writers and, expressed in terms of acreage, has been exploited by some Americans. The fact is that the control of German East Africa is disadvantageous

and burdensome. Any one who looks at the statistics and facts of the matter will have to admit this;[1] but there is much clearer proof. Suppose that the British and the League of Nations offered to transfer that territory to us, either in the form of a Mandate or annexation or anything else, it would perhaps be difficult to find any American foolish enough to want his country to take it over; certainly those who would be loudest in their denunciation of such a proposal would be the writers and Senators to whom I have alluded. As Wilson said at one of the meetings of the Council of Ten of January 30: "Many of these Mandates would constitute a burden, by no means a privilege, and a very serious burden."

Of course London wanted to keep peace in what I may call the Commonwealth family, but aside from that desire cared very little about annexation as distinguished from Mandates either in Africa or in the Pacific; indeed, while committed to the Japanese claim for islands North of the Equator, the British probably preferred the mandate system to annexation in either locality.

Turkey was another matter; Egypt, the Suez Canal, the Persian Gulf, the Balfour declaration regarding Palestine, the rather vague commitments to the Arabs and the various agreements with the French and the Italians about Syria or Cilicia or Anatolia were all factors.

Furthermore, there was a good deal of difference in public opinion in Great Britain on this general question. During the election campaign in December (1918) it had been bluntly asserted, for example, that Mesopotamia was a very rich country and if the British took it over it would help to pay the cost of the War. It may be doubted whether any one still thinks so, after writing down on the red ink side of the ledger £100,000,000 or more spent in that region after 1919, even now that Mosul is to be credited to Iraq and if there be included with the credit all the profit which perhaps will be derived from the British share of the Mosul oil which may some day be exploited.

On the other hand was a feeling which was pretty strong even in 1919 against the extension of British colonial rule in any form whatever, anywhere. "The British Empire is big

[1] A comparison between Tanganyika (373,000 square miles) and Texas (265,000 square miles) is of interest. Recent censuses give Tanganyika a population of 4,300,000 and Texas 4,700,000. Exports of Tanganyika for 1925 were say $15,000,000, whereas shipments *through Galveston alone* in 1924 were $547,000,000. The British Government since 1920 has made to the former German possession various grants aggregating £2,500,000 which are either "Free" or which as yet have paid no interest.

enough" is the way that this sentiment was reflected among some of the most responsible British representatives at Paris.

There was a noteworthy clash of views in the matter of the German colonies between Mr. Wilson on the one hand and Mr. Hughes of Australia and Mr. Massey of New Zealand on the other. According to common report, the discussions within the British delegation were even more heated and violent. The result was a victory for Mr. Wilson, not complete, but still substantial.

Even in the "C" mandates, as we now know them or, in other words, German South-West Africa, New Guinea and other Pacific Islands which by the Covenant may be "administered under the laws of the Mandatory as integral portions of its territory," the principle of trusteeship is firmly established; this was clearly shown in connection with the uprising of the natives in South-West Africa in 1923. And as to the other territories in Africa and those formerly in Turkey, the world took a very long step forward when Article 22 of the Covenant came into force.

No one dissented at Paris from the view that Germany should lose her colonies and all of them. As I have shown [1] this was Wilson's view at least as early as December 10, 1918. The matter was settled in a few words in the Council of Ten on January 24, recorded as follows:

> All he (Mr. Lloyd George) would like to say on behalf of the British Empire as a whole was that he would be very much opposed to the return to Germany of any of these Colonies.
>
> * * * * * *
>
> President Wilson said that he thought all were agreed to oppose the restoration of the German Colonies.
>
> M. Orlando, on behalf of Italy, and Baron Makino, on behalf of Japan, agreed.
>
> (There was no dissentient and this principle was adopted.)

It was General Smuts who fathered the resolution [2] which was offered at the meeting on January 30 of the Council of Ten.

If we go back to the Smuts Plan (Document 5) we find very naturally a considerable variance between the Smuts Plan and the Smuts resolution. In proposing the idea of Mandates, General Smuts had expressly excluded its application to "the barba-

[1] p. 41 *sqq.*
[2] For the text, see p. 109 *sq.*

rians" of Africa. Now, however, they were to be within the principle; and so clause 8 of the resolution (the vital clause, from the point of view of Smuts, Hughes and Massey)[1] introduced for some[2] of these "barbarians" the Mandates in their mildest and most milk and water form, that nearest to the annexation which Smuts desired, what we now call "C" Mandates, the territories which "can be best administered under the laws of the Mandatory as integral portions thereof" etc.

Indeed, a good deal of the Smuts resolution (aside from clause 8) may be found in a British "Draft Convention Regarding Mandates" which is marked "Revised January 24, 1919," a copy of which Cecil handed me on January 25; the text of this follows:

1. The High Contracting Parties agree and declare that all territories named in the protocol hereto as "vested territories" which in consequence of the late war are to be transferred to any states shall be held by such states upon trust to afford to their inhabitants peace, order and good government.

2. The High Contracting Parties further agree that all the territories named in the protocol hereto as "assisted states" which in consequence of the late war are to attain their independence, shall be entitled to such assistance as they may desire for the purpose of securing peace, order and good government for the population of those states and may for the purpose of obtaining such assistance select in concert with the Council of the League of Nations some state member of the League as assisting power unless under any convention in connection with the Peace Treaty an assisting power has already been assigned to them.

3. In no vested territory shall the following practices be permitted:

(i) Slavery and forced labour.
(ii) Traffic in intoxicants deleterious to the health of the natives.
(iii) The establishment and maintenance of fortifications or fortified bases or native armed forces, except for the purpose of and to the extent necessary for guarding or policing the territory administered by the authority immediately responsible for their maintenance.
(iv) The grant by the State of any rights or powers involving the transfer to private individuals or corporations of the

[1] See the remarks of the last named in Document 18.
[2] Namely, those of South-West Africa. All other mandates in Africa are "B" mandates; but as I mentioned earlier, all the Pacific Mandates are also "C" Mandates.

responsibility for discharging any of its obligations under this convention.

(v) The reservation by any State of the produce of any territory for the benefit of its own nationals, whether by restriction on Export, Government Monopoly, or special concessions to individuals or companies.

4. In all vested territories or assisted states there shall be maintained:

(i) Freedom of conscience or religion, subject only to the maintenance of public order and morals;

(ii) the policy of the open door or equal opportunity for the nationals of all the states Members of the League in respect of the use and development of the economic resources of such territories;

(iii) freedom of transit and equality of trade conditions in accordance with the provisions of the Conventions relating thereto;

and execution shall be duly and faithfully given to

(iv) the provisions of the Arms Traffic Convention.

5. In respect of vested territories the States placed in charge thereof shall discharge all duties and responsibilities and be invested with all powers and rights of a sovereign government, but they shall report annually to the League of Nations on all matters relating to the discharge of their obligations under this convention. Such Report shall contain full information as to the progress of the territories and particularly as to the steps taken to secure effectively the prevention of the prohibited practices.

6. In respect of assisted States the assisting States shall be invested with such powers, rights, duties, and responsibilities as shall be given to them by any agreements with the Assisted States, and they shall report the terms of such agreements to the League of Nations and shall also make a report every year to the League showing the steps taken to carry out those terms.

7. There shall be established by the Council of the League a Commission or Commissions to assist the League in the supervision of the mandatory states and the reports mentioned in articles 5 and 6 shall be considered by such commission and commissions, who may make such recommendations thereon to the Council of the League as they shall think right.

Note. The terms of this Draft Convention, would, of course, be additional to any special provisions contained in the Treaties creating each individual mandate.

With this draft Convention was a Note, which suggested the advisability of some additional Declarations:

It may possibly be desirable to amend the annexed draft Convention regarding Mandataries in the direction of adding some general declarations agreeable to American and to international labour sentiment. The following additions are suggested as innocuous and in accord with British practice.

PREAMBLE

The High Contracting Parties who have united in creating, by the present Treaties of Peace and by the Covenant establishing the League of Nations, the new settlement of territories which formerly belonged to Austria-Hungary and Turkey and of the Colonies formerly under the dominion of the German Empire, recognizing that the League of Nations must be regarded as the guardian of the settlement thus arrived at and, in all matters not so finally settled, as Trustee for the peoples of the territories named in the Protocol hereto, now unite in laying down certain fundamental principles in accordance with which they are resolved that this trusteeship shall be exercised.

ARTICLE I

At the end, after the words "good government" insert the words "All policies of administration or economic development shall be based primarily upon the well considered interests of the peoples themselves. Although, in such territories, the inhabitants are not yet capable of nominating or explicitly approving the State appointed as mandatary of the League, it is recognized that the rule requiring the consent of the governed to their form of government should nevertheless be fairly and reasonably applied, and that the Mandatary should take into full and friendly consideration any expression of the desires of the inhabitants or of any section of them, with the object of determining their best interests, in view of all the circumstances of their situation and development."

ARTICLE II

Add at the end after the words "assigned to them," "The assisting State thus selected in accordance with the expressed desire of the autonomous people of the territory concerned shall adopt as the object of all tutelary functions discharged by it the development of that people, in as short a time as possible, into a political unit which can fully take charge of its own affairs, determine its own connections and choose its own policy."

Previous to the meeting of the Council of Ten on January 30, the Smuts resolution had been discussed at a meeting of the

British delegation on January 29. President Wilson had seen it also on the same morning. I received a copy of the resolution on January 29 and that copy had on it a marginal note from Colonel House to the President reading as follows:

> L. G. and the colonials are meeting at 11:30 and this is a draft of a resolution that Smuts hopes to get passed. He wants to know whether it is satisfactory to you. It seems to me a fair compromise.

I reproduce the text of the resolution as offered at the meeting of the Council of Ten, indicating by italics the amendments then made, the words stricken being in parenthesis:

> 1. Having regard to the record of the German administration in the colonies formerly part of the German Empire, and to the menace which the possession by Germany of submarine bases in many parts of the world would necessarily constitute to the freedom and security of all nations, the Allied and Associated Powers are agreed that in no circumstances should any of the German colonies be restored to Germany.
>
> 2. For similar reasons, and more particularly because of the historic misgovernment by the Turks of subject peoples and the terrible massacres of Armenians and others in recent years, the Allied and Associated Powers are agreed that Armenia, Syria, Mesopotamia, *and Kurdestan,* Palestine and Arabia must be completely severed from the Turkish Empire. This is without prejudice to the settlement of other parts of the Turkish Empire.
>
> 3. The Allied and Associated Powers are agreed that advantage should be taken of the opportunity afforded by the necessity of disposing of these colonies and territories formerly belonging to Germany and Turkey which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, to apply to these territories the principle that the well being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in the constitution of the League of Nations.
>
> 4. After careful study they are satisfied that the best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and that this tutelage should be exercised by them as mandatories on behalf of the League of Nations.

5. The Allied and Associated Powers are of opinion that the character of the mandate must differ according to the stage of development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

6. They consider that certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory power until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory power.

7. They further consider that other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory subject to conditions which will guarantee the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic (and the prevention of the military training of the natives for other than police purposes, and the establishment of fortifications or military and naval bases) *and the prevention of the establishment of fortifications or military and naval bases and of the military training of the natives for other than police purposes and the defence of territory,* and will also secure equal opportunities for the trade and commerce of other members of the League of Nations.

8. Finally they consider that there are territories, such as South-West Africa and certain of the Islands in the South Pacific, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the mandatory state, and other circumstances, can be best administered under the laws of the mandatory state as integral portions thereof, subject to the safeguards above-mentioned in the interests of the indigenous population.

In every case of mandate, the mandatory state shall render to the League of Nations an annual report in reference to the territory committed to its charge.

The resolution was drawn and offered and passed by the Council of Ten in English; the subsequent French text of the Quai d'Orsay is printed in a later Chapter.[1]

A comparison of the text of this resolution with the language of Article 22 of the Covenant shows that all of the resolution (except its first two paragraphs) is carried into the Covenant, with almost no changes except those made necessary by the different characters of the two documents. The last two para-

[1] See p. 508 *sqq.*

graphs [1] of Article 22 and also the words in its second paragraph "and who are willing to accept it," and the phrase regarding freedom of conscience, etc., are not in the resolution; but otherwise the two papers are as alike as two such papers could well be.

The last two paragraphs of Article 22 read thus:

> The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.
>
> A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

The language of the former of these is derived from clause 6 of the Smuts Plan,[2] which, however, was much broader in regard to the terms of the Mandates, reading as follows:

> That the degree of authority, control, or administration exercised by the mandatary state shall in each case be laid down by the league in a special act or charter, which shall reserve to it complete power to ultimate control and supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatary state.

In all of Wilson's Paris drafts the proposal was even more sweeping as the following extract [3] shows:

> The degree of authority, control, or administration to be exercised by the mandatory State or agency shall in each case be explicitly defined by the Executive Council in a special Act or Charter which shall reserve to the League complete power of supervision, and which shall also reserve to the people of any such territory or governmental unit the right of appeal to the League for the redress or correction of any breach of the mandate by the mandatory State or agency or for the substitution of some other State or agency, as mandatory.

The provision for a Mandates Commission, which in the operation of the system has proved to be of the utmost signifi-

[1] These paragraphs were added at the Sixth Meeting of the Commission on the League of Nations on February 8. See p. 185 *sqq.*

[2] Document 5.

[3] The first paragraph of Supplementary Agreement III of his Second Paris Draft (Document 9) and the second paragraph of the same Agreement in the Third Paris Draft (Document 14); the language in the First Paris Draft (Document 7) is almost the same.

cance, seems to have its origin in clause 7 of the British Draft Convention.[1]

There were two meetings of the Council of Ten on January 30, chiefly devoted to the discussion of the Smuts resolution which was offered by Lloyd George. The minutes[2] of these meetings in Document 18 will be found to be interesting. The minutes of the afternoon meeting, after being circulated, were revised. I have reproduced both texts. The earlier draft is doubtless more literally what was said.

I was present at those two meetings and dictated my own account of them for my Diary that day as follows:

> The morning session was devoted to the resolution about the Colonies, about which there was a good deal of discussion.
>
> The President first spoke of the publications regarding the proceedings of the Conference of the previous day and said that these publications in the press, referring especially to the Daily Mail, could not continue without making the situation impossible and requiring him to make a public statement of his own views in detail.
>
> He then went on to discuss the resolution which was prepared by the British and which Mr. Lloyd George had offered as representing a compromise with the Dominions, obtained with great difficulty. The President said that this resolution practically assured that there could be no difference of opinion but then went on to say that he did not see how any such resolution could be adopted until the plans for the League of Nations had been drawn and agreed upon. This precipitated a long discussion, in the course of which Mr. Lloyd George expressed great disappointment and discouragement but modified his resolution by making it provisional in character.
>
> Mr. Hughes for Australia made a reactionary speech, saying that the Dominions wanted annexation of the Colonies, and that he could yield no more and had cabled home to his Government, so that he could not definitely assent to the resolution.
>
> At the end of the morning session Signor Orlando made a few observations regarding the *status quo* of provisional mandates, and Mr. Massey announced that he wanted to be heard, so that the matter went over until the afternoon.
>
> Beginning at the end of the morning session, Mr. Massey made a speech in the afternoon following Mr. Hughes, along similar lines but accepting definitely the resolution proposed.

[1] Quoted at p. 106 *sq.*

[2] A portion of the minutes, relating to other matters, is omitted.

The President then got up and asked: "Am I to understand that Australia and New Zealand have presented an ultimatum to this Conference and that if annexation was not conceded definitely now, they could not take part in the accord at all?" Hughes replied to this by a statement which started off very vigorously, to the effect that this was as far as Australia could go, but ended up in a much milder tone to the effect that everything was always subject to negotiation.

General Botha then made a very attractive and moving speech. He referred to the war in which he had fought against the British Empire and to the difficulties which had followed it. In these difficulties he said he had always tried to be an idealist and to secure his ideals as a principle, giving way so far as was necessary to secure them. He begged the meeting to take that attitude now. He said that he was a supporter of the President; that he believed in his ideals and wished to see them carried out, and he hoped that they would be carried out and that there would be no difference over matters which while perhaps important could be conceded without offending the ideals and principles of the President. He pleaded that the really great steps forward be taken and that all other matters be adjusted.

This was followed by a conciliatory speech by Mr. Massey, and the incident was ended. A slight change in the verbiage of the resolution was made at the suggestion of Sir Robert Borden, and then M. Clemenceau and M. Pichon stated that France could not recognize the absence of the right to raise volunteers in territories assigned to her as mandatory, for purposes of defense. President Wilson and Mr. Lloyd George explained that this was covered by the resolution and that it was intended to provide against the training of native troops for purposes of aggression, which France had never done, and which M. Clemenceau added, she never intended to do. The resolution then passed.

There is one point regarding the resolution of January 30 which has generally escaped attention. The language of its first paragraph is very broad, to the effect that none of the German colonies should be restored to Germany. Similarly, the language of the third paragraph is equally broad in applying to "these colonies and territories," meaning all of them theretofore mentioned, "the principle that the well being and development of such peoples form a sacred trust of civilization" and so on. But when the resolution goes on to classify the various peoples in its sixth. seventh and eighth paragraphs, it speaks first of "certain communities formerly belonging to the Turkish Empire" ("A" Mandates); then "other peoples especially those of Central Africa"

("B" Mandates); and finally "territories such as South-West Africa and certain of the Islands in the South Pacific" ("C" Mandates).

Thus the islands in the North Pacific, while doubtless included in some of the general language, are not specifically mentioned at all. These were the islands held by Japan and no others. The "South Pacific" meant the Pacific South of the Equator; and Samoa is south of the Equator; and so is Nauru.

Wilson was thinking of these islands held by Japan and had taken notice of the fact that they were not specifically mentioned in the resolution. My Diary records a conversation with him at the Quai d'Orsay, of which I quote a part as follows:

> After the meeting (on January 30) the President came up to me and talked for fifteen or twenty minutes. He said that he spoke of the ultimatum so as to clear up the situation; that Australia and New Zealand with 6,000,000 people between them could not hold up a conference in which, including China, some twelve hundred million people were represented.
>
> He then spoke of the resolution as not going as far as he had hoped, to which I replied that it was in my opinion a great achievement and pointed out how far it went in respect of Turkish territories and in Central Africa. To this the President assented, saying that he had not thought of it as going quite that far.
>
> He then spoke of the limitation in the resolution to the islands in the South Pacific and asked me to consider this question in respect of the islands in the North Pacific which Japan held. He said that these islands lie athwart the path from Hawaii to the Philippines and that they were nearer to Hawaii than the Pacific coast was, and that they could be fortified and made naval bases by Japan; that indeed they were of little use for anything else and that we had no naval base except at Guam.

The discussion at these meetings of January 30 was not directly on the question of the *distribution* of the Mandates; this matter was passed on by the Supreme Council on May 7, except as to Turkish territories;[1] but no one can read the discussion of January 30 without observing that, in part, such a distribution had already received the tacit assent of everyone. Indeed the claims of the British Dominions had been presented at length to the Council of Ten on January 24.

[1] The selection of Mandatories for Mesopotamia, Palestine and Syria was made by the Allied Supreme Council at San Remo on April 25, 1920.

So it was assumed that German South-West Africa was to be under the control of the Union of South Africa, New Guinea under the control of Australia and German Samoa under the control of New Zealand; and despite the statement of Lloyd George that "the resolution did not deal with the distribution of Mandates at all," it was also admitted in the conversations about the black armies in Africa that France was to have certain African Mandates, and these of course could be none other than in Togo and the Cameroons.

The distribution of the Mandates was thus obviously in everybody's mind. Lloyd George, for example, said that the British had not the slightest intention of being mandatories of a considerable number of territories they now occupied, such as Syria and parts of Armenia. He thought the same thing applied to Kurdestan and part of the Caucasus, although they had rich oil-wells. He did not think they had the slightest intention of being mandatories even for the oil-wells of Baku, but somebody had to be there to protect the Armenians, and to keep the tribes and sects in Lebanon from cutting each others' throats and attacking the French or Turks, or whoever else might be there.

Certainly it was not an unfair implication from this that the British would look with favor on a Mandate for Mesopotamia; and just after the passage of the resolution of January 30, the Belgians were heard by the Council of Ten regarding their claims to a portion of East Africa, claims which were subsequently realized, although not completely settled till 1923.

Furthermore, there is no doubt that the French contention regarding recruiting of troops in their mandated territories in Africa was accepted at the afternoon meeting of the Council of Ten on January 30. The language of Clemenceau could hardly have been more explicit; in the original unrevised text of the minutes, the rather long discussion [1] ended thus:

> M. Clemenceau said that if he could raise troops, that was all he wanted.
>
> Mr. Lloyd George replied that he had exactly the same power as previously. It only prevented any country drilling the natives and raising great armies.
>
> M. Clemenceau said that he did not want to do that. All that he wished was that the matter should be made quite plain, and he did not want anybody to come and tell him afterwards that he had broken away from the agreement. If this clause meant that

[1] See Document 18.

he had a right of raising troops in case of general war, he was satisfied.

Mr. Lloyd George said that so long as M. Clemenceau did not train big nigger armies, for the purposes of aggression, that was all the clause was intended to guard against.

M. Clemenceau said that he did not want to do that. He therefore understood that Mr. Lloyd George's interpretation was adopted.

President Wilson said that Mr. Lloyd George's interpretation was consistent with the phraseology.

M. Clemenceau said that he was quite satisfied.

The language of the resolution itself, as resulting from the amendment of Sir Robert Borden,[1] was not perhaps perfectly clear. It speaks of "defence of territory" which *might* mean simply the mandated territory; but the French view that this meant home territory as well was accepted. My own pencil note of the discussion, written during the meeting, read as follows:

Clemenceau and Pichon speak against the clause preventing voluntary recruiting in colonies—they want this right in mandataries as well as present colonies.

This right is admitted by L. G. and W. W.

But the language of the resolution was not changed; it remained "defence of territory" and so it is in Article 22 of the Covenant. Later on[2] I shall describe the attempt which was made by the French to change this language of the Covenant by adding to it "and of the territory of the mother country." That attempt did not succeed owing to the opposition of President Wilson.

The result of all this is a rather curious one. The six "B" Mandates, all for African territory, are not all alike. Four of them, those over British Togo, British Cameroons, Tanganyika (British) and Belgian East Africa do not contain the following clause,[3] which is found in the French Mandates for their portions of Togo and the Cameroons:

It is understood, however, that the troops thus raised may, in the event of general war, be utilized to repel an attack or for defence of the territory outside that subject to the mandate.

[1] See p. 110.
[2] See p. 501 *sqq.*
[3] See *League of Nations Official Journal,* vol. 3, pp. 858, 875.

However, the development of the Mandate system under Article 22 of the Covenant is beyond the scope of this work. Its history forms already a very interesting chapter in present day international affairs. The non-ratification of the Treaty of Versailles by the United States was followed by negotiations, unnecessarily prolonged by the Department of State, as to our relations with the mandated territories; but what I may call the Mandate status is now completely recognized; the rights of its *cestuis que trust* have become fixed rights, which very likely will, from time to time, be increased, as events in Syria and Mesopotamia and elsewhere have indicated; but certainly they will never be diminished.

CHAPTER X

THE COVENANT OF FEBRUARY 14

THE draft Covenant which was presented to the Plenary Session of the Peace Conference on February 14, 1919, was the draft which followed from the work of the Commission on the League of Nations up to that time.

During the eleven days from Monday, February 3, to Thursday, February 13 inclusive, that Commission held ten meetings. The Commission met once on every day of this period except two (February 9 and 12) and on the last day (February 13) there were two meetings. As the average length of the meetings was three hours or so, the Commission was in session altogether for say thirty hours. Besides this, there were various sub-committee meetings and conferences during this period, all of which I shall review.

As first constituted, the Commission consisted of fifteen members; but, as I have pointed out,[1] the insistence of the Small Powers led to an increase of this number to nineteen. The four additional members from Greece, Poland, Roumania and Czecho-Slovakia did not attend until the Fourth Meeting of the Commission, on February 6.

President Wilson presided at all these ten meetings except the last one, which he did not attend and at which Lord Robert Cecil was in the chair.

The minutes in English of the Commission on the League of Nations in their final form, including not only these ten meetings but all the later meetings as well, will be found as Document 19. I emphasize the fact that these are the minutes in their final form. There were earlier drafts of the minutes, to some of which I shall refer. One of them was a print of the English minutes of the first ten meetings, distributed about March 22. The differences between this print and the minutes of these meetings in their final form were due largely and perhaps wholly to the request of members of the Commission for changes.

Any one reading these minutes will be struck with the fact that some of them report the discussions extensively; others in very brief compass. This was in part due to two divergent ten-

[1] See p. 84.

dencies in the Secretariat which prepared the minutes. Mr. Wilson's idea was that the minutes should be very summary indeed, recording only the action taken. Accordingly, the American member of the Secretariat sought to carry out this idea and the British member was perfectly willing to go along with him. On the other hand, the French wanted to make the minutes more a report of the debates and they had their way to some extent. It is of course a rule of all international meetings that any delegate may require a particular statement made by him embodied in the minutes *in extenso* and instances of this character will be found among these minutes.

The French minutes of these ten meetings are in Document 20 which contains also the minutes of the three March meetings.[1] While in general they are substantially the same as the English minutes, due account being taken of different forms of expression in the two languages, there are none the less some discrepancies. I shall have more to say about these as I review the happenings of each meeting in detail, when I shall also refer to some accounts other than the minutes and indeed to some differences between the record of the minutes in either English or French and the proceedings which were had.

Minutes, while usually an exact account of action taken, are sometimes also a softened account of words spoken; and this is not only the case, I may remark, in international meetings under the control of diplomats, it is also the case in the American Congress; every one who is familiar with the facts knows that the Congressional Record contains statements that were *not* made on the floor of the Senate or the House, also that it omits statements that were made and alters others from their pristine sense, or lack of it; and here I am not speaking of insertions under the "leave to print" but of those remarks which purport to have been taken down by stenographers.

However, before discussing any of the ten February meetings of the Commission on the League of Nations, there are two contemporary papers to be mentioned which give a general account of the sessions. The first of these was written by Mr. Whitney H. Shepardson for release in the American newspapers of Sunday, February 23. I reproduce it here, for it is as good a pen picture of this series of meetings as could be written, and Mr. Shepardson was present at almost all of them:

[1] In all, thirteen of the fifteen meetings. The minutes of the last two meetings I have only in English.

During the past two weeks, meetings of nineteen men have been held in Colonel House's room on the third floor of the Hotel Crillon, the workshop of the American Commission to Negotiate Peace. There the Commission on the League of Nations drew up its Covenant.

There is nothing particularly impressive about Room 351. It is the kind of reception room that may be found in many a French hotel. It is large, high and decorated in the rather elaborate French style. But whatever its appearance may be while it is being used for everyday purposes, it assumed a wholly different look during the meetings of the Commission. In the center of the room, a big round table covered with red cloth. Around the table, nineteen chairs for the nineteen members of the Commission. Slightly behind yet scattered through this circle of seats, a number of other chairs for French and English translators. In the corners, three or four desks, and around the walls occasional chairs for any secretaries whom the members might care to bring with them. All in all, the table might have been laid for a meeting of the Cabinet or an American board of directors.

In this room the Commission met ten times during eleven days. They came together in the morning, afternoon or evening at hours which would not conflict with the program of the Peace Conference itself, whose work envisaged their own, or with that of the Supreme War Council, then engaged upon pressing questions relating to the renewal of the Armistice. It might be figured out that the meetings averaged three hours in length; but it is hardly appropriate to speak of averages in this connection. No time was set by the Commission for the termination of the day's work. There was a job to be done, and a man's own time was a secondary consideration. Nobody looked at the clock.

It appears inconceivable that a constitution of the League of Nations could have been drawn in thirty hours. It was done, but the bald statement is misleading, for it fails to take certain things into account. It says nothing, for instance, of a single expedient by which the task of the Commission was cut clearly in half. Whether one spoke in English or in French, it made no difference. As he talked there might be heard the low hum of interpreters translating his remarks word by word and phrase by phrase. Every moment of the thirty hours was made to work, and no time was lost in the slow but prevailing process of translation.

It fails likewise to reckon in all the thought which had previously been given to the subject. Each one of the statesmen who sat around the table had formulated definite ideas on the subject, and came to the conferences with an illuminated and active mind. Even before America's entry into the war, President Wilson had stood before the Senate and had advocated the formation

of a League of Nations. During the war he had developed his plan in long conversations with his closest advisors. After the Armistice he had come to Europe, the first President to leave the United States, to urge the consideration of the League as the first and basic problem of the Peace. Colonel House sat beside him at the table.

Lord Robert Cecil, with his scholarly mind, his practical sense and his large vision, was ably seconded in presenting the point of view of the British Empire by General Smuts, the great Boer leader of other days, a member of the British War Council and the author of a widely read pamphlet on the League idea. Léon Bourgeois, well advanced in years of service at the Hague Conferences in the interests of peace, had with him Larnaude, Dean of the Faculty of Law at the Paris School of Law. Orlando, Italy's vivid prime minister and an eminent jurist as well, had Senator Scialoja as his colleague in expressing the mind of the Government at Rome; while Baron Makino, Japanese Foreign Minister, and Viscount Chinda, her ambassador at London, contributed the keen and quiet opinion of the Far Eastern country.

Though these five Powers were each represented by two members on the Commission, its deliberations were not dominated by their views. There also sat down to the table Hymans, the Belgian Foreign Minister; Senator Pessôa of Brazil; V. K. Wellington Koo, China's Minister at Washington; Kramar, Prime Minister of the Czecho-Slovak Republic; Veniselos, Prime Minister of Greece; Dmowski, President of the Polish National Committee; Jayme Batalha Reis, Portuguese Minister to Petrograd; Diamandy, Minister Plenipotentiary of Roumania, and Vesnitch, Serbian Minister at Paris. They included representatives of the Far East, South America, and the oldest and the newest States of Europe. This striking group of statesmen, so keenly interested that they presented an unbroken record of attendance at the meetings, contributed to the discussions a force and vision which rivalled that of the Greater Powers.

The meetings were business-like to a degree. The members invariably came together on the hour, exchanged a word of greeting as they made their way to their seats, took the documents of the day out of their portfolios, and proceeded with the next article. Each of them found on the table before him all new papers upon which discussion might depend. Every day, as the Commission made progress through the draft, there was laid at each place a revised copy indicating just what had been accomplished on the day before. If there were amendments to be proposed by any member, he saw to it that they were typewritten and distributed so that each of his colleagues might examine their merits in advance.

The meetings were marked by extreme simplicity. Diplomatic dress has disappeared with the diplomacy of the past. Each man wore what was convenient,—dinner-coat, morning-coat or business suit—and the business suit prevailed. There was none of that sense of the overwhelming significance of the task which is sometimes the death of decision. They went about the matter in a commonplace way.

There were no orations. There was no spinning out of useless technical distinctions. Plain speaking prevailed. From the first it was agreed that the meetings should consist of informal interchanges of ideas of which no stenographic report was to be kept. In fact, it was not until the third meeting that Secretaries were named, and even then with instructions to record only amendments proposed, conclusions reached, and a brief analysis of the arguments in order that the trend of thought might be clear. The men wanted to think aloud. Their work was one which called for the frankest and freest examinations of all phases of the project. They wanted to shake off the reticence which is provoked by the presence of the court-stenographer. They gave up the privilege of perpetuating their words in order that they might speak with absolute freedom.

President Wilson presided over every meeting except the last. He induced discussion where it was needed. He checked it when it ran too far or became involved in technicalities. He was sympathetic toward every view put forward. He was decisive when he spoke for the United States. Throughout the meetings he secured the delicate balance of practical good sense. At one moment when imagination had led the Commission far into the future, a smile came over his face as he remarked, "Gentlemen, I have no doubt that the next generation will be made up of men as intelligent as you or I, and I think we can trust the League to manage its own affairs." And the Commission came back to the thing in hand.

The first meeting, that of the 3rd of February, was very brief. The Commission came together; the President spoke a few words and laid before them a draft which they agreed to use as the basis of discussion. So day after day the Draft was held up to the light and criticized and amplified. On the evening of February 11th, at the end of the eighth meeting, the first reading was completed.

Though the project emerged unchanged in principle, the draft had been altered in many details and there were before the Commission various proposed amendments and changes in phraseology. It was decided to put the Covenant into the hands of a Drafting Committee composed of M. Larnaude, Lord Robert Cecil, Veniselos and Vesnitch for a thorough overhauling.

Late the following evening their work was finished, and

the printing press was busy all through the night so that the amended draft might be on the table the next morning. In addition to the satisfaction of a job well done, the American soldiers who set the type and corrected proof and ran the press will treasure a letter of thanks which the President sent them before he sailed. The second reading began on Thursday at ten o'clock, but by one, only the first seven Articles had been finally adopted. Perhaps with the assurance that the 13th could not fail to mark another momentous event, the President excused himself and left to attend a critical meeting of the Supreme War Council that afternoon at the Quai d'Orsay.

The Commission resumed their work at 3:30 in the afternoon under the leadership of Lord Robert Cecil. One by one they took up the remaining Articles; one by one they were passed upon. At 7:48 Lord Robert, sitting low in his chair and holding the lapels of his coat, read the Twenty-sixth Article:

> "Amendments to this Covenant will take effect when ratified by the States whose representatives compose the Executive Council and by three-fourths of the States whose representatives compose the Body of Delegates."
>
> "Is there any objection to this Article?" He waited a moment.
>
> "If not, it is adopted. Gentlemen, our work is done. The President of the United States will report our conclusions to a plenary session of the Conference tomorrow."
>
> They left the room.

The other account was written by myself. During the latter part of February and the first ten days or so of March, 1919, I wrote in Paris a memorandum regarding the Covenant, based on my Diary, my recollection and my papers, which gave an account of the shaping of the Covenant up to the February 14 draft. From this I extract what I called "Some of my Impressions of the Meetings as a Whole." With a few trifling changes and some rearrangement, it follows here as then written:

> The discussions were in English and in French. During the first few meetings there were oral translations of the speeches, but this took considerable time, and subsequently interpreters sat behind Delegates who did not understand both languages, and translated as the speeches were made. Thus Colonel Bonsal sat behind the President and Colonel House and translated the French to them. Generally speaking the proceedings were most informal. No one rose to speak, although the President was standing during his opening address.

I took some notes generally of the meetings, though not of the first meeting, but my notes are of quite a fragmentary nature. My duties were of an advisory character, particularly in respect of any question of constitutionality, and it was accordingly necessary that I should follow the discussions with a care that prevented the taking of notes. In any event, the rather informal nature of the discussions made the taking of notes not an easy task and in some cases it was even quite difficult with the utmost care to determine the precise language of an amendment which was adopted without dissent, for the language would be read to the meeting and agreed to and discussion commenced of another Article or of a subsequent part of the same Article before it was possible to write down the full language of the amendment. Even after the secretariat was appointed there was considerable difficulty in this regard, although in every case the exact language was finally obtained. In one instance I recall I had to inquire of the President after the close of the meeting as to precisely his understanding of what had been done, and his understanding as stated to me was adopted by the Secretariat as the action of the meeting, although none of the members of the Secretariat had been able to grasp definitely what it was.

The President and Colonel House always spoke in English, although it can hardly be said that Colonel House spoke at all. He never addressed the Commission except at the last meeting when the President was not in attendance. On one occasion before that he made a remark to the President which the President repeated to the Conference, commencing "Colonel House suggests." Colonel House sat next to the President on his left, and next to Colonel House were the British Delegation, Lord Robert Cecil and General Smuts. Colonel House and also the President conferred frequently during the meetings with Lord Robert Cecil, and sometimes with General Smuts, and indeed the speeches sometimes halted during these conferences.

Lord Robert Cecil spoke usually in English, but sometimes in a rather halting French which he himself described as a jargon. General Smuts spoke always in English and I think his understanding of French was not complete.

The Japanese delegates seldom spoke, but always in English. I believe that they understood French perfectly, as they never required a translation; but their faces were quite impassive, and my belief is perhaps only an assumption.

While only ten powers were represented, M. Reis, delegate from Portugal, sat next to Viscount Chinda. M. Reis was the only delegate who used French and English with equal facility, speaking sometimes in one language and sometimes in the other, and fluently in both. He seemed to me a diplomat of the old

school. He was noticeably near-sighted, having to hold papers within two or three inches of his eyes in order to read them, so that the English text of the Covenant, with its 8 point print, was peculiarly unfortunate in his case.

M. Vesnitch, of Serbia, sat next to M. Reis, sometimes speaking in an English more fluent than he was disposed to admit. M. Vesnitch preferred to speak, and usually did speak, in French. His English, while accurate, was not of English structure, and at his request I recast the English of some of his proposed amendments.

M. Hymans of Belgium spoke and understood English well, but in commenting on amendments always spoke in French, which he obviously preferred, and in which he understood the shades of meaning conveyed by language better than in English. M. Hymans took a very active part in the discussions. On one occasion when debating the representation of the small Powers he said that an Executive Council with only two small Powers on it would be the creation of an agreement such as would have been made by the Congress of Vienna. For this I may say he was very courteously reproved by Lord Robert Cecil, who remarked that he could not imagine any country to which Belgium preferred to submit her case, above Great Britain.

Mr. Koo, delegate from China, always spoke in English. He understood French, and I have heard him speak it a little, though I do not know his fluency in the language. However, he never used it at the meetings. Mr. Koo made a distinct impression by his ability, and on the subject of representation of the small Powers made one of the best speeches of the Commission.

M. Pessôa, delegate from Brazil, spoke only in French. I think he understood English imperfectly, if at all.

Next to M. Pessôa sat the second Italian delegate, Senator Scialoja. Scialoja spoke seldom, and always in French. He did not, I think, understand English. He impressed me as an intelligent scholar, and I assumed that his infrequent speech was due to the presence of Signor Orlando.

Between M. Scialoja and Signor Orlando sat the French delegates, M. Larnaude on the right, and M. Bourgeois, on the left. Neither of these gentlemen speaks English. I think both of them read it, and M. Larnaude at least to some extent understands it. However, the English remarks were interpreted to them. M. Larnaude is a lawyer of distinction. His French was a pleasure to listen to, being elegant and precise, and spoken with great clearness. M. Bourgeois spoke more slowly, and with much greater prolixity. Both he and M. Larnaude were very tenacious of the French view, and frequently they both spoke on the same point, and occasionally, I must say, not with entire consistency.

Signor Orlando sat on the President's right. He does not speak or understand English, and always spoke in French with a little hesitation, and with a distinctly Italian accent. His personality undoubtedly made a deep impression. While speaking with a knowledge of the law, his remarks were always clear and to the point, and his point of view was always that of practical commonsense. President Wilson obviously deferred greatly to Signor Orlando's opinions, and he said openly that he differed with him very rarely, and then with hesitation.

The meetings were greatly dominated by President Wilson. The whole tone of the speeches, when differing from his views, conveyed the aim of convincing him, which indeed they sometimes did. But to his final opinions there was an unmistakable deference, with the possible exception, in some cases, of the French delegates. This was strikingly shown at the last meeting, at which the President was not present, when the meeting was practically unanimous in favor of omitting the paragraph about religious freedom, and yet was unwilling to vote to eliminate it in the absence of the President.

Lord Robert Cecil had also great influence upon the meetings. Not only his views but his manner were obviously those of a statesman of long experience. His patience and his willingness to listen to argument gave his statements in reply great and even convincing weight.

It may be said from a technical point of view that the proceedings of the Commission were really in English. The discussions of the text were of the English text. While amendments were sometimes presented in French, they were always when accepted agreed upon in English. So that despite the fact that the two languages were on an equality, English was really the language of the Commission, so far as its actual work was concerned.

Among my duties was to see that at the beginning of each meeting the text, both in English and French, of the part of the draft agreed upon up to the close of the previous meeting was on the table. This task did not begin until the meeting of Tuesday, February 4th, when the Commission commenced to consider the text by articles; but from that time on it was most laborious. In doing this work, however, I paid particular attention to the English text, and did not attempt to see whether the French text as originally laid before the meeting was correct or not, but simply to see that *when* changes were made, they were made in French. This, of course, sometimes required a translation of an English amendment. At times I translated it myself; at times the translation was done in connection with the work of the Secretariat; and at times it was done by one of the clerical staff of Colonel House.

It will facilitate the necessary detailed account of the progress from day to day and the equally necessary references to documents if I give here a general outline of the procedure. The basic draft before the Commission was the Hurst-Miller Draft, which was in twenty-two Articles. After the First Meeting and its general discussion, the Commission in the following seven meetings took up that draft, Article by Article, amended it to some extent textually, adopted other amendments or suggestions in principle, but did not as it went along change the numbering of the Articles or the arrangement of the draft at all except by the transfer of one paragraph from Article 2 to Article 3. However, the Commission added two new Articles, numbered 23 and 24. Then at the close of the Eighth Meeting of the Commission, on February 11, the whole work done up to that time was referred to a Drafting Committee.

Accordingly references to Article numbers up to this point are very easy to follow; no change had been made.

As reported back by the Drafting Committee, the Covenant contained twenty-seven Articles. Two of these were new and there was some rearrangement, so that the numbering of the Articles was changed. The consideration of this Drafting Committee text by the Commission at its last two meetings, on February 13, resulted, among other things, in the elimination of one Article, that on religious liberty. Accordingly, the Covenant of February 14 contained twenty-six Articles and the numbers of some of the later Articles were necessarily again changed.

If we compare, then, the Covenant of February 14 with the Hurst-Miller Draft, we find that one Article of the Hurst-Miller Draft (Article 19, on religious liberty) had been dropped; the remaining Articles and the Preamble had been more or less amended and recast; on the other hand, four new Articles had been added, which appear in the Covenant of February 14 as Article 9, 22, 24 and 26.

To facilitate comparison of the texts,[1] a tabular statement of the numbering of the Articles in the two drafts is appended to this Chapter.[2]

So far as a French text of the Covenant throughout these discussions is concerned, it is to be said here that at least prior to February 13 no French text in the proper sense of the words

[1] For which see Document 19, the Hurst-Miller Draft being Annex 1 to the minutes of the First Meeting, and the Covenant of February 14 being the Annex to the minutes of the Tenth Meeting.

[2] See also Note on the Numbering of the Covenant Articles at p. 469 *sqq.*

ever existed; during the first eight meetings of the Commission efforts were made to lay before the members, in French as well as in English, the result of its work on the text from day to day, but these Articles in French were in general [1] nothing but hasty translations of the English text; and throughout the sessions of the Commission the tentative character of these translations into French was recognized. What the Commission did was to work with French translations but without a French text; the basis of its discussions was an English text, the Hurst-Miller Draft; and while amendments were from time to time offered in French (or in both languages) they were, to the extent accepted, incorporated in the English text. The text reported by the Drafting Committee at the morning meeting on February 13 (Ninth Meeting) was an English text,[2] although it was accompanied by a new and revised French version; and the text adopted by the Commission at its afternoon meeting on February 13 (Tenth Meeting) was an English text;[3] thus throughout the period, such French text as existed was a translation of the English.

Of course, the Report of the Commission on the League of Nations to the Peace Conference on February 14 was printed in French as well as in English and like the French minutes of the Tenth Meeting of the Commission, necessarily contained a French text of the Covenant. But I repeat that no French text as a whole, or even in part, was ever passed on and accepted *as a French text* at these ten meetings of the Commission on the League of Nations.

[1] The amended Mandates Article (17 of the Hurst-Miller Draft) is an exception.

[2] Annex 2 to the minutes of the Ninth Meeting in Document 19.

[3] i.e. the Covenant of February 14 which is the Annex to the minutes of the Tenth Meeting in Document 19.

Comparison of Article Numbers

COVENANT OF FEBRUARY 14	HURST-MILLER DRAFT
Article 1	Article 1
2	Part of 2
3	3
4	Part of 2
5	4
6	5
7	6
8	8
9 (New)	
10	7
11	9
12	10
13	11
14	12
15	13
16	14
17	15
18	16
19	17
20	18
	19 omitted
Numbered 22 to 27 inclusive as reported from Drafting Committee February 13[1] 21	20
22 (New)	
23	21
24 (New)	
25	22
26 (New)	

[1] See Annex 2 to the minutes of the Ninth Meeting in Document 19.

CHAPTER XI

FIRST MEETING OF THE COMMISSION

When I went from my office [1] to attend the First Meeting of the Commission on the League of Nations on February 3 at the Hotel de Crillon, I supposed that the draft that was to be the basis of discussion from the American point of view was the latest or Third Paris Draft of President Wilson (Document 14). Accordingly, I took along with me a sufficient number of the printed copies of that draft; I did not have the slightest idea that the Hurst-Miller Draft was to be presented and had no copies of it with me.[2]

Just before the meeting began, Colonel House told me that the Hurst-Miller Draft was to be presented as the basis of discussion and accordingly I hurried back to my office to obtain copies of that draft. In the meantime, the meeting had commenced, President Wilson had taken the Chair and when I returned had almost concluded his opening remarks. He then asked me to distribute the copies of the Hurst-Miller Draft.

Fifteen delegates, the full number of the Commission at that time, were present.[3]

The official record of this meeting (see the English and French minutes) is an extremely meagre one, doubtless because the Commission did not appoint a Secretariat until its Third Meeting (February 5). Besides the members of the Commission, my Diary indicates that among those present were Mr. Frazier, Colonel Bonsal, Colonel Moore, Lord Eustace Percy, Prince di Scordia and two Secretaries of the Japanese Delegation.

I did not take any notes of the meeting at the time; but my account of it, written in Paris during the latter part of the month, is as follows:

[1] In 4, Place de la Concorde.

[2] See p. 73 *sqq.*

[3] According to the minutes, the Japanese delegates present at the First Meeting were Baron Makino and Viscount Chinda. The earlier draft of the English minutes as well as the notes of the American Secretariat (see p. 132) state (erroneously, I think) that Baron Makino was replaced at that meeting by M. Otchiai.

The opening meeting was quite informal; there were no official secretaries present; that is, no secretaries of the meeting and no secretariat was appointed. The discussion was chiefly upon questions of procedure, and the President emphasized the informal character of the conversations. I remember his saying that he wanted to express himself freely and without reserve, so that he could change his mind and not be bound by what he had said previously. M. Bourgeois wanted a more formal character to the meeting and a general discussion of principles, whereas Lord Robert Cecil urged that time should not be lost and that discussion of general principles was wholly unnecessary. It was finally agreed in substance that discussion of general principles could take place as far as was necessary for the discussion of the various Articles as they were reached, and the only paper before the first meeting was the English text of the Hurst-Miller Draft. There was no French text then available. The draft in French of the procès-verbal of this meeting contains an annex, which is a French translation of the Hurst-Miller Draft; this translation was not before the meeting on February 3, but is substantially the French text that was before the Commission at its subsequent meeting on February 4.

At the first meeting only ten Powers were represented by fifteen delegates, that is, two delegates from each of the five Great Powers and one for each of the other five Powers. All of these were present at the opening of the meeting except the Delegate from Portugal, M. Reis, who came in after the President had finished his opening speech.

As mentioned above, there was no French translation of the Hurst-Miller Draft before the First Meeting of the Commission. However, such a translation appears as Annex I to the French minutes of that meeting (see Document 20). This French translation of the Hurst-Miller Draft is very imperfect. It was very hastily made on the evening of February 3 by various members of the American clerical force. As may be seen by comparison with the English text, it even omits one whole paragraph, the last paragraph of Article 15. The pressure of time prevented any revision of it prior to the meeting of the next evening.

Regarding the French and Italian Drafts the English minutes of the First Meeting say this:

Mr. Léon Bourgéois laid before the Commission the French proposals relating to the creation of a League of Nations (Annex 2). Mr. Orlando laid before the Commission an Italian Draft Scheme (Annex 3).

The French minutes, while mentioning the action of M. Bourgeois, say nothing about the Italian Draft, although they contain as Annex III a French translation of that draft, just as the English minutes contain as their Annex 3 an English translation. This English translation is not wholly accurate and differs in some respects from the English translation of the Italian Draft which the Italians themselves made at Paris; accordingly, I print the Italian proposals as drawn up in Italian as Document 21.

As a matter of fact, however, and despite the minutes, neither the French Draft nor the Italian Draft was laid before this First Meeting of the Commission. The earlier draft of the French minutes which I have makes no mention of either of them, nor does the English print of the minutes of the first ten meetings, circulated about March 22. There is no doubt that the references to the French and Italian Drafts were put into the minutes later as a matter of *politesse*. The only draft before the First Meeting of the Commission was the Hurst-Miller Draft in English.

By far the most complete account available of the First Meeting on February 3, is in the following notes of the American Secretariat, written (I think) by Colonel Moore, and entitled "Secretary's Notes of a Conference Held in Colonel House's Rooms at the Hotel Crillon, Paris, on Monday, February 3, 1919, at 2:30 p.m., to Draft a Plan for the League of Nations":

PRESENT:

United States of America
President Wilson
Colonel House
France
M. Léon Bourgeois
M. Larnaude
Japan
M. Viscount Chinda
M. Otchiai
Brazil
M. Epitacio Pessôa
Serbia
M. Vesnitch
British Empire
Lord Robert Cecil
Lt. Gen. Rt. Hon. J. C. Smuts
Italy
M. Orlando
M. Senator Scialoja
Belgium
M. Hymans
China
Dr. V. K. Wellington Koo
Portugal
M. Jayme Batalha Reis

President Wilson urged the great importance of the present undertaking, the most difficult thing ever undertaken in international relations. It is intolerable to have a situation presented such as existed at the beginning of this war. The great nations

did combine against the Central Empires. By so doing they became conscious of their common interests. A basis was laid for the League of Nations. The League of Nations is no longer optional; it is compulsory. The constitution for it must be thought out by the delegates. The League must not only function but must also accomplish the objects foreseen for it.

It has been studied for some time theoretically. The students must now address themselves to a practical plan rather than a theoretical one. Plans have been formulated by various nations. There is no idea that the nations preparing them will fight for their own particular plans. They are all for a common purpose. There have been informal conversations which have shown that there is accord. At a meeting of the President, Colonel House, Lord Robert Cecil and General Smuts it was suggested that the various plans be reduced to one simple skeleton. This had been done. The President suggested that this draft thus made be taken piece by piece and discussed. He urged that the main thing was to get something definite right away and then to make progress.

M. Léon Bourgeois thought that it would be difficult to proceed until an opportunity had been offered to examine the draft.

Signor Orlando agreed to discuss the draft that had been arrived at in the informal conversations. He further agreed that it should be discussed first in a general manner and then specifically. He thought that it should be translated into French and that the delegates should be allowed twenty-four hours to study it.

M. Léon Bourgeois agreed with Signor Orlando in regard to the discussion of general principles. He then said that if these meetings were to be more than formal that a secretariat of the commission should be presented.

Lord Robert Cecil thought that there had been a great deal of discussion and that he thought the commission should get down to details. He did not favour meeting today to arrange formalities, tomorrow for general discussion and the next day for details. The whole world is watching what is taking place in this commission.

President Wilson said that this was called an informal meeting for two reasons: first, there was not time to organize, second, if the meetings are formal with secretaries each day's proceedings will be the subject of discussion. The task of this commission is much like that of the Commission that drew up the constitution of the United States. The proceedings of that body were withheld from the public until its whole work was accomplished. The President hopes this commission will likewise proceed in a sufficiently informal manner to safeguard its processes. It was, therefore, called informal in order to keep its proceedings from general

discussion. The President feels strongly on this subject. The frankest discussion is required.

M. Hymans wanted a general discussion which need not necessarily be formal. He did not ask for delay but believed that time should be given to read over the various drafts and study them.

M. Léon Bourgeois stated that he did not mean by an organization of the secretariat that the proceedings of the Commission should be given to the public, but that the secretaries should be present for the purpose of assisting the commissioners.

He believed that the consideration of the text of the draft article by article should be put over for a day until an opportunity had been afforded for studying it. He believed that the discussion of it, article by article, should be preceded by a general discussion.

Lord Robert Cecil saw no advantage in a general discussion when no differences of opinion had been shown to exist.

Signor Orlando thought a general discussion unnecessary because the powers have come to an understanding on general principles in the informal conferences. He thought that the Commission could pass to a discussion of the articles.

M. Hymans suggested that without having a general discussion if any member wished to make a general declaration of principles he should be permitted to do so.

M. Vesnitch raised two questions: first, as to the representation of the small nations in the League of Nations, and, second, as to whether the organization should be called the "Society of Nations" or the "League of Nations." He thought that the word "League" implied force.

Dr. Wellington Koo wished to know the feeling of the commission as to furnishing the nations not represented with copies of the plans discussed.

President Wilson objected to this on the grounds that it would lead to publicity.

Lord Robert Cecil called attention to the fact that M. Vesnitch's discussion on the representation of the smaller nations might well have been arrived at under the detailed discussion of Article 3 of the draft rather than under the general discussion of principles.

President Wilson stated that the question of representation of the small nations was one of the most delicate ones to be dealt with. In case of war the great nations would have the greater burden in upholding any member of the League who might be attacked. Of course, the smaller nations would also be interested but would not be called upon as heavily as the greater nations.

Signor Orlando suggested taking up the subject raised by M. Vesnitch as to a name. He thought that the word "League" was

already associated with the project. He also thought that the word "League" had in it the idea of something binding and stated that he preferred it to the word "Society."

M. Léon Bourgeois preferred the word "Society" for the reason that historically speaking the word "League" brings with it the idea of strife. Leagues have always been formed with the idea of an enemy before one. He thought that the idea of a society meant that the organization was not against anyone.

M. Jayme Batalha Reis suggested calling the organization a "Society of States" rather than of nations.

Lord Robert Cecil thought that the difference between the words "Nations" and "States" was a very small one.

He asked what suggestion should be given to the Press about the meeting.

President Wilson suggested the following: "We met to compare views as to how to proceed and decide upon a procedure which would advance the matter."

M. Léon Bourgeois went into a discussion as to the order in which nations should be admitted into the League. He thought that the Allied Nations should be admitted first and later the neutral nations. . . . After the enemy nations have complied with all the terms which will be required of them by the Treaty of Peace they could be considered as free nations and might be admitted.

M. Hymans and M. Jayme Batalha Reis argued that more than twenty-four hours' time should be allowed in order to permit the delegates to read over the various plans and study them.

Signor Orlando urged the necessity of hurrying.

M. Léon Bourgeois asked time to have the plans translated, to study them and to consult with his government.

President Wilson stated that if the delegates consulted with their governments they would not arrive anywhere. There is no use consulting one's government about each particular point. The duty of the delegates is to form a plan and to present it to their governments.

The meeting adjourned to meet at 8:30 p. m. February 4th at the same place.

The following communiqué was issued to the press:

> The Commission met to compare views as to procedure and to arrive at a method of procedure which would facilitate progress.
>
> It was agreed that an accord in principle had been reached by the resolution previously passed by the Conference, and that discussion should proceed accordingly at the next meeting, which will be held at the Hotel Crillon tomorrow evening at 8 o'clock.

It will be seen from these notes that the discussion at the first meeting was quite general, relating chiefly to procedure. This could hardly have been otherwise. The Hurst-Miller Draft which Wilson submitted to the meeting had been printed only the previous day and most of those present had never seen it before. Very naturally, Signor Orlando "thought that it should be translated into French and that the delegates should be allowed twenty-four hours to study it." None the less the meeting had a very definite result, which was that the draft before it should be taken up for a first reading, Article by Article, and this was the procedure followed during subsequent meetings.

CHAPTER XII

SECOND MEETING OF THE COMMISSION

ACCORDINGLY, such examination, Article by Article, commenced at the Second Meeting of the Commission which was held on the next evening, February 4, when the Preamble and Articles 1 and 2 were adopted with rather unimportant amendments.

The change in the Preamble was merely the transposition of some of the words. In Article 1, the phrase regarding the Council "representing the States more immediately concerned in the matters under discussion" was stricken out at the suggestion of Wilson; and in Article 2, at his suggestion, it was provided that the Assembly should meet not only as occasion required but also "at stated intervals"; and three amendments of the British to this Article were also passed.[1] These were in the nature of drafting amendments; but one of them incidentally and perhaps inadvertently struck out any limitation on the number of representatives (two, in the Hurst-Miller Draft) which a Member of the League might send to the Assembly. This question was to come up again.[2]

The resulting text of the Preamble and the first two Articles of the draft is an Annex to the English minutes of the Second Meeting.

The discussion which then commenced of Article 3 involved the extremely important question of the composition of the Council and the representation of the Small Powers thereon. The debate on this point was very animated and it became clear that there could not be agreement on a Council composed of the Great Powers only, Cecil's plan, which the Hurst-Miller Draft contained. Almost every one preferred the scheme of all of President Wilson's Paris drafts, which provided for a Council on which the representatives of the Small Powers would be one less in number than those of the Great Powers, a scheme which Wilson had taken from General Smuts' proposals. The insist-

[1] For these textually, see the English minutes of the Second Meeting in Document 19.

[2] See pp. 226, 274, 275.

ence of the Small Powers on this point was too urgent to be disregarded. As Cecil finally said, there was such opposition to his proposal that the Article would have to be redrafted.

The influence of the Small Powers was also seen at this meeting by their bringing about the admission of four additional members [1] of the Commission, making it a body of nineteen instead of fifteen delegates. The question went to a vote, as the French minutes (not the English) say; but the vote was a rather informal one, "a vote of nine," as the notes of the American Secretariat call it,[2] meaning the affirmative only.

Another important agreement reached at the meeting was that the name of the new organization should be "League of Nations" in English and "Société des Nations" in French. The question of the official language of the Covenant was mentioned and left in the air, as a matter for the Conference.[3]

This Second Meeting of the Commission (February 4) was a rather long one; it lasted till about 11:30 and commenced, according to my records and the notes of the American Secretariat, at 8 o'clock, although the minutes say 8:30; and while no Secretariat of the Commission had yet been appointed, various secretaries were present taking notes; Wilson remarked during the meeting that amendments were being noted.

The official record of this Second Meeting in Documents 19 and 20 does little more than set forth its results. The debates are of much more interest than such an outline and I have three accounts of them, the first of which is these notes of my own written at the meeting:

> Received British amendments.
>
> The British amendments to Preamble adopted.
>
> The Preamble is accepted provisionally, with a reserve as to its language after consideration of the Articles by M. Bourgeois.
>
> Some discussion as to "League", "Society", "Nations", "States" by Brazil, France, Italy.
>
> It was agreed to use
>
> League of Nations in English.
>
> Société des Nations in French.

[1] Greece, Poland, Roumania and Czecho-Slovakia.

[2] See p. 144.

[3] Thus the minutes put it. My notes say nothing on the point. According to the notes of the American Secretariat (see p. 142) the question asked by Reis was a very general one that might have related to the official language of the Covenant or of the League or both. The French notes (see p. 149) are clearly wrong as to the question, which certainly had nothing to do with the discussions of the Commission.

Belgium asked that four Small Powers (Poland, Czecho-Slovakia, Roumania, Greece) be admitted, additional to those admitted.

The President suggested this would be inadvisable.

M. Bourgeois asked for a Secretariat.

M. Larnaude spoke of procès-verbaux and of procedure.

President suggested informal conversations and after they were finished formal sittings to record decisions.

Bourgeois makes all reserves.

Reserves are to be noted in writing.

Belgium presents claims of four Powers to be represented.

The President again objects.

Lord Robert Cecil supports the President's views.

The discussion proceeds generally between President, Hymans and Cecil.

Then Bourgeois supports Hymans.

The President says it should be put to a vote.

Vesnitch thinks the increased number will not impair (?) the work.

He thinks the four Powers should be added.

Portugal agrees.

It was agreed to admit the four Powers and the President will convey the message to the Conference.

DISCUSSION OF ARTICLE I

Hymans, Lord Robert Cecil, President Wilson.

Bourgeois discussed the representation of the States.

President moves to strike out: "Representing the States more immediately concerned in the matters under discussion.

This agreed to *nem. con.*

DISCUSSION OF ARTICLE II

1st paragraph:

M. Bourgeois thinks they should meet periodically.

President Wilson suggests to add "at stated intervals and" after the word "held" in the first line.

Orlando	Hymans
Larnaude	Scialoja

First paragraph passed—not formally.

2nd paragraph:

1st. British amendment proposed.

Scialoja Vesnitch Orlando

Adopted.

2nd. British amendment proposed and adopted—Cecil.

3rd. British amendment proposed and adopted—Cecil.

The transfer of the last paragraph of Article II to Article III as proposed by the British was not mentioned.

Percy's note to me said: "Cecil forgot it."

ARTICLE III

General statement by President Wilson.

The argument is in favor of the great Powers on the Executive Council.

M. Vesnitch speaks.

He says the credit of the League of Nations must be that of the great Powers.

Rothschild as a citizen.

The League of Nations is an ideal as well as a practical thing.

Equality of States is a principle of international law.

The French and Italian projects have taken into account the small Powers.

We should give the world the thought that an opportunity has come to the great Powers.

He suggests three to the great Powers and two to the small Powers—then the first American plan.

Lord Robert Cecil: Absolute equality must be set aside, as Parliaments would not accept it.

He refers to the difficulties of voting except by unanimity and to the difficulty of choice of smaller Powers.

Hymans: He argues that the small Powers will not accept this plan and argues for equality of right.

Koo: Does not object to the standing representation of the Great Powers.

He thinks there should be representation on the Executive Council of the small Powers. He favors the first American plan.

Pessôa, for Brazil: Thinks that the first American plan should be adopted.

Reis, Portugal: He is against the idea of Bourgeois plan, as the great Powers must be represented. He supports the first American plan.

Bourgeois: He speaks of the reign of law—droit—as a future member of the Society of Nations—not as a great Power.

He ends by supporting the first American plan.

Orlando: He is in sympathy with the small Powers.

But why is Belgium defended if some other small Power is there?

In questions of droit, *all* Powers are equal.

The real question is the one of voting.

Cecil: He objects to the proposal for the minority representation—agrees to the lack of danger if the voting is unanimous.

A new project should be drafted.

Wilson: A redraft will be attempted on the lines of the five great Powers and other Powers elected by the small Powers or by all Powers.

Suggests meetings every evening at 8:30.

Adjourned.

A fuller account of this Second Meeting of February 4 is in the notes of the American Secretariat, which were doubtless written by Mr. Shepardson and which, omitting the repetition of the names of those present,[1] were as follows:

President Wilson suggested that the simplest way to proceed was to take up each paragraph of the draft, a copy of which was before each of the members of the Commission, and discuss it. He asked if there was any objection to taking up the Preamble. It was as follows:

> "In order to secure international peace and security by the acceptance of obligations not to resort to the use of armed force, by the prescription of open, just, and honorable relations between nations, by the firm establishment of the understanding of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, and in order to promote international co-operation, the Powers signatory to this Covenant adopt this constitution of the League of Nations."

Lord Robert Cecil said it might be preferable to postpone the consideration of the Preamble until the end of the Commission's deliberations. In any case it is suggested that the words "And in order to promote international co-operation" should be transferred to the beginning of the Preamble as follows: "In order to promote international co-operation and to secure international peace" etc.

He said that he would not press the matter if anyone objected.

M. Léon Bourgeois suggested examining the Articles before taking up the examination of the Preamble.

President Wilson asked whether M. Bourgeois appreciated the fact that the adoption of the Articles and of the Preamble at this state of the proceedings was only provisional.

M. Pessôa preferred calling the organization "League of States" or "Union of States" rather than "League of Nations."

[1] See the American Secretariat notes for February 3 at p. 132. The names here were identical, including M. Otchiai for the Japanese, although the minutes say Baron Makino.

Lord Robert Cecil said that he understood M. Pessôa's principle to be that he believed that the organization should be called the "League" or "Union of States" rather than of Nations.

M. Larnaude said that he understood that the word "Nations" was employed in the sense of "States." He approved of M. Pessôa's idea to use the word "Union" rather than "League" or "Society."

President Wilson stated that there was an objection to the use of the word "Union" as it would indicate that the Commission was going further than it really was going. "League of Nations" is the name to which every one has become accustomed. If it is altered the people will be led to think that something new is being adopted.

M. Bourgeois thanked the President for using the word "Society" in his address to the Senate yesterday.

President Wilson said that he was using the word "Society" for a French audience, it having been understood that "Society" would be used in French and "League" in English.

M. Reis asked what the official language would be.

President Wilson said that this had not yet been decided. If there was any difference in significance in French and English it would be decided by the "League of Nations."

M. Hymans asked whether it would not be a good idea to have a secretary to note the amendments.

President Wilson stated that this was being done.

M. Hymans raised the point as to whether or not four additional members should be added to the Commission.

President Wilson replied that the five great Powers had asked that this point be referred to this Commission for its decision which was to be communicated back to them. His own idea was that the larger the Commission was made the slower the work would proceed. Inasmuch as it was the intention to call in neutrals and small powers as progress was made, he thought this matter would care for itself. It is not as though the Commission was settling the fate of any nation. It is settling the fate of all. Hence he saw no point in admitting four other powers.

M. Bourgeois desired that a vote be taken on the subject.

Lord Robert Cecil stated that the Commission was perfectly well constituted whether the other four powers were added or not.

M. Bourgeois did not understand whether this was a Commission regularly constituted or whether it was a certain number of men chosen by their governments to exchange ideas.

M. Larnaude explained the way in which the Commission to assess damages was organized. He stated that there was a secretary general to produce a procès-verbal.

President Wilson showed that the Commission for assessing

damages was dealing with a different matter; that its proceedings were more like those of a court. He stated that this Commission's proceedings would be incumbered by a secretariat.

M. Bourgeois urged for a secretariat.

M. Larnaude said that it was necessary to have a procès-verbal.

President Wilson opposed the idea. He stated that he wished to keep his mind wide open, so that he could say the opposite of what he had said before if he saw fit.

Signor Orlando said that this was a Committee for study.

President Wilson suggested holding informal conversations until the document should be in shape and then having formal conversation to adopt it.

M. Hymans explained this to M. Bourgeois and M. Larnaude who agreed.

Lord Robert Cecil hoped that this would not mean that there should be two sets of discussions.

President Wilson said that the formal conversations would simply be for the purpose of adopting the convention.

Signor Orlando said that he understood that where there was an agreement nothing would be said but where there might be a disagreement this would appear in the formal report of the conversations.

M. Léon Bourgeois did not see how any agreement could be reached unless all the guarantees of discussion are held by recording the conversations.

Signor Scialoja suggested as a compromise that the text be adopted and if there were any objections they should be noted.

President Wilson recalled the discussion to the problem in regard to the admission of the four other members of the Commission.

M. Hymans urged that Roumania, Greece, Poland and the Czecho-Slovaks be admitted.

President Wilson showed that these were mostly new nationalities and that it would be more natural to draw in older nations than the new ones. He said that he was a friend of the Czecho-Slovaks and Poles, but that he thought it better not to involve them.

Lord Robert Cecil said that the object of this Commission is to draw the best draft for a League of Nations so that no nation is favored. When it is drafted, the plan is to be submitted to the whole Peace Conference. The question involved was whether nineteen Commissioners are better qualified to draft this plan than fifteen.

M. Hymans seemed to think that it would be more fair to have the smaller nations represented.

M. Léon Bourgeois favored admitting the four extra nations.

M. Vesnitch thought that it would be a good thing to admit them as it would give them a very good impression.

M. Reis agreed.

Lord Robert Cecil hoped that this would not involve going back on what had already been done.

It was stated that it would not.

President Wilson called for a vote.

By a vote of nine it was agreed to report back to the Conference of the five powers that this Commission would take in the representatives of the four other powers.

President Wilson then proceeded to explain Article I of this draft and asked for any comments.

> "The action of the High Contracting Parties under the terms of this Covenant shall be effected through the instrumentality of meetings of Delegates representing the H. C. P., of meetings at more frequent intervals of an Executive Council representing the States more immediately concerned in the matters under discussion, and of a permanent international Secretariat to be established at the capital of the League."

M. Bourgeois raised an objection to the Executive Council being composed of States more immediately concerned in the matters under discussion. He said that in the plan submitted, the Executive Council would not be sufficiently permanent.

President Wilson suggested striking out the words "representing the States more immediately concerned in the matters under discussion."

President Wilson then proceeded to the consideration of Article II, Paragraph One, which is as follows:

> "Meetings of the Body of Delegates shall be held from time to time as occasion may require for the purpose of dealing with matters within the sphere of action of the League."

He asked for any amendments to Paragraph One.

M. Léon Bourgeois argued for having fixed meetings of the Board of Delegates.

President Wilson showed that it was purposed to give the League certain important and continuous functions; that the members would consist of diplomats of the capital chosen as the seat of the League. These men would be in constant touch. He would not like to see the Delegates go home and work up something to discuss between meetings. The more formal and continuous the organization be made, the better.

M. Léon Bourgeois said that there was not such a great difference between his views and the President's, but that he thought that the members of the League, whoever they might be, should have some regular times for meeting.

President Wilson suggested amending the Article so as to read "Meetings of the Body of Delegates shall be held at stated intervals and from time to time as occasion may require," etc.

Signor Orlando called attention to the fact that this was a permanent Council that could meet when it wished to.

President Wilson said that it was most important that it should meet when it wished to.

M. Larnaude said that this was an institution which must have periodical meetings if it is to be effective.

Lord Robert Cecil saw no objection to having fixed meetings, but thought that the intervals should be long.

President Wilson believed that the intervals should not be stated.

Lord Robert Cecil agreed to this.

President Wilson read Paragraph Two, Article II and Paragraph Three of Article II:

> "Meetings of the Body of Delegates shall be held at the capital of the League or at such other place as may be found convenient and shall consist of not more than two representatives of each of the H. C. P.
>
> "An Ambassador or Minister of one of the H. C. P. shall be competent to act as its representative."

Lord Robert Cecil suggested that for the words "not more than two representatives" down to the end of the third paragraph substitute the words "the ambassadors or ministers of the High Contracting Parties at . . . unless other representatives are specially appointed for this purpose."

After the words "Body of Delegates" in the fourth paragraph of Article II, insert in each case the words "or the Executive Council." In consequence this paragraph should be transferred to Article III as the fourth paragraph of that Article.

For the words "those present" at the end of the same paragraph, substitute the words "the States represented." He also suggested striking out paragraph three entirely.

President Wilson thought that it would be a mistake to have a body of special representatives.

Signor Scialoja, backed by Signor Orlando, thought it necessary that every member of the League should always have its representatives present.

The Commission passed to the discussion of Paragraph Four of Article II, which reads as follows:

"All matters of procedure at meetings of the Body of Delegates, including the appointment of committees to investigate particular matters, shall be regulated by the Body of Delegates and may be decided by a majority of those present at the meetings."

Lord Robert Cecil suggested adding the words "and the Executive Council" after the words "by the Body of Delegates," the purpose of this being to allow the Executive Council to decide its own matters of procedure. He also suggested changing the phrase "and may be decided by a majority of those present at the meeting" to "and may be decided by a majority of the States present at the meeting." He said that the word "those" instead of "the States" appeared to have been a slip.

President Wilson stated that the commission had now come to the question as to how the Executive Council should be constituted. He showed that the chief physical burdens of the League will fall on the great powers whether these burdens are military or economic. He said that the adoption of the League will depend upon whether it can be done without making the powers too uneasy. It is desirable to make the plan acceptable that the great powers should be in the Executive Council. Then it should be considered what other elements, if any, there should be to it. The general idea is that the Executive Council will consist of those other powers whose interests are affected. The scheme is to have the Executive Council consist of the interested parties. The great powers are always interested. He called attention to the fact that it was allowed to any party interested to draw the matter away from the Executive Council back into the group of delegates where no group of powers can impose their will.

M. Vesnitch spoke for giving the smaller parties the opportunity of being represented in the Executive Council. This idea was provided for in the first American plan, and in the Italian plan.

President Wilson said that the difficulty of making a satisfactory choice from among the smaller powers led to the elimination of this plan.

Lord Robert Cecil said that the drafters of the plan had started with the idea that the Council should be small. The problem was therefore how it should be constituted. If M. Vesnitch's idea that all the powers are equal were adopted the Council would have to be elected by all the members of the League. This might lead to some of the greater powers being voted down by the smaller powers. Such a scheme would never be acceptable to the greater powers.

A second objection is that at present it is planned that the Council shall act by unanimity. If the number be increased the element of voting will be introduced. This might lead to having a greater power dragged along by the smaller powers. The plan as presented goes as far as possible because the matters in discussion may be brought finally into the full body of delegates. He admitted that much was to be said for the idea of the equality of the powers but did not see how a plan for it could be worked out.

M. Vesnitch stated that if the article is retained the smaller powers would be dissatisfied.

M. Hymans said that he would go further than M. Vesnitch and would say that the smaller powers would not accept the scheme as it exists. He admitted the need of a council which should be small and be able to act quickly, but he said that there was something even more important which was that the Council must inspire confidence. There will be a danger unless the smaller powers are represented. If a small power had difficulty with a great power it would be at a disadvantage. He preferred the former American plan.

He criticized paragraph 2 which provided that invitations will be sent to any power whose interests are directly affected on the ground that he did not understand who was to judge when the interests were affected.

President Wilson asked him what system he preferred.

M. Hymans replied that he preferred the French or American system.

Dr. V. K. Wellington Koo [1] did not entirely indorse the views of M. Vesnitch and M. Hymans. He did not object to the standing representation of the great powers, but he did ask for the representation of the smaller powers. He said that what the Commission is now trying to do is to draw up a League of Nations that will operate successfully and that the smaller nations must not be made to feel that there is a gulf between the great powers and the smaller ones. It is impossible to get a world-wide opinion unless the small nations are heard. He preferred the American plan.

M. Pessôa objected to the scheme on the ground that it is not a League of Nations because only the five great powers are represented. He also approved of the first American plan.

M. Reis also preferred the first American plan with the exception that he did not like the classification of the smaller powers into two groups.

President Wilson said that this was not essential.

M. Léon Bourgeois feared that if too much power is given to

[1] Cf. the text of Koo's speech at p. 151 *sq.*

the great powers that they will act rather for peace than for peace founded on justice.

President Wilson asked whether the French Government would be agreeable to the American scheme.

M. Léon Bourgeois replied that he believed his government would agree to any plan that was arrived at unanimously by the Commission.

Signor Orlando said that since the action of the Executive Committee must be unanimous he did not understand Lord Robert Cecil's objection to increasing the representation.

Lord Robert Cecil objected to any proposal which might lead to an opposition of interests between the great powers and the small powers. He showed that there never had been a division between the great powers as such and the small powers as such and feared that this opposition of interests might be engendered. However, he saw that there was such opposition to his proposal that the Article would have to be redrafted.

President Wilson stated that he understood that there would be no objection to a scheme which comprises membership of the five great powers and a minority to be elected by the smaller powers.

M. Hymans agreed to this.

Lord Robert Cecil asked whether the action of the Council should be by unanimity or by a majority vote.

No decision was reached on this question.

The meeting adjourned until February 5th at 8:30 P. M. at the same place.

The third account of the Second Meeting of the Commission is the French draft procès-verbal or notes of the French Secretariat which follow. In this account, however, I have included Mr. Koo's speech in the language in which it was delivered, that is in the English form in which it was subsequently handed in by the Chinese Secretariat with the request that it be incorporated *verbatim* in the minutes:[1]

Sur le préambule du Projet de Pacte, M. Bourgeois craint que la rédaction ne soit difficile à arrêter avant l'examen des Articles. Il propose en conséquence de le réserver pour la fin de la discussion.

Mr. Wilson indique qu'il s'agit d'une rédaction provisiore, et non pas définitive.

Lord Robert Cecil est d'accord avec M. Bourgeois mais en tout cas il croit préférable que les mots "afin d'instaurer la coopération internationale" soient transférés au commencement du pré-

[1] A request which was not complied with as it should have been.

ambule, comme suit: "Afin d'instaurer la coopération internationale et d'assurer la paix."

Cet amendement est adopté provisoirement.

M. Pessôa indique que le mot "Société des États" a un sens particulier, tandis que "Ligue" a un caractère consultatif.

M. Larnaude propose le mot "Union" qui aurait l'avantage d'indiquer l'accord existant entre toutes les nations actuellement constituées en États. Le Président Wilson voit de sérieux inconvénients à employer le mot "Union" et, d'accord avec M. Orlando, il préfère les formules consacrées par l'usage.

M. Bourgeois remercie le Président Wilson d'avoir employé les mots "Société des Nations" dans son discours à la Chambre des Députés.

M. Reis pose la question préalable de la langue employée dans les discussions de la Commission.[1]

Le Président propose que les deux langues soient également employées.

M. Bourgeois fait la réserve que c'est à la Conférence qu'il appartient de décider et il rappelle le précédent de la Conférence de la Haye dont les discussions ont eu lieu en français.

M. Hymans rappelle la demande de représentation de nouvelles petites Puissances, au nombre de quatre: Grèce, Pologne, Roumanie, Tchéco-Slovaques. Cette demande a été appuyée par M. Jules Cambon à la Conférence et renvoyée à la Commission.

Après un échange de vues sur cette question, au cours duquel M. Hymans et M. Vesnitch défendent le point de vue de l'adjonction de nouvelles Puissances, M. Bourgeois signale que le refus d'admettre ces quatre nouveaux membres pourrait causer une impression morale regrettable, tandis que leur admission serait une solution libérale que serait favorablement admise par opinion publique sans qu'elle puisse retarder sensiblement le travail de la Commission.

A la suite de la discussion, il est convenu que les nouveaux membres seront admis à la Commission. Le Président Wilson fera parvenir cette décision à la connaissance de la Conférence.

La Commission aborde la discussion des Articles du Projet.

ARTICLE I[2]

M. Bourgeois demande s'il doit y avoir périodicité ou permanence dans les réunions des Délégués.

M. Hymans croit que sur ce point le Projet français est plus précis. Il estime qu'il faut une représentation permanente et restreinte.

[1] See p. 138, note 3.

[2] Part of the debate recorded here related to the first paragraph of Article II.

M. Wilson tient également à la permanence et estime qu'il ne doit pas être nécessaire de faire des convocations exceptionnelles.

M. Scialoja rappelle à ce sujet la proposition italienne (article III, dernier alinéa) d'après laquelle chaque Conférence pose la date de la suivante, ce qui n'empêchera pas d'avoir des Conférences extraordinaires.

M. Bourgeois précise que les réunions doivent avoir lieu à intervalles périodiques sans fixer la période et en outre toutes les fois qu'il y aura lieu, comme l'indique le Projet.

En conséquence l'Article I est adopté sous réserve de la suppression des mots "où seront représentés les États plus particulièrement intéressés dans les questions en discussion."

ARTICLE II

Lecture est donnée de l'amendement de Lord Robert Cecil.

Au 2ème alinéa, pour les mots "pas plus de deux représentants" jusqu'à la fin du 3ème alinéa, substituer les mots "les Ambassadeurs ou les Ministres des H. P. C. à . . . "à moins que d'autres représentants ne soient spécialement nommés à ce propos."

M. Scialoja préfère le texte américain qui spécifie que le représentant peut être le représentant diplomatique sans que ce soit nécessaire. Il craint que l'amendement de Lord Robert Cecil n'ait l'inconvénient de créer des questions personnelles dans le cas où un représentant diplomatique serait exclu.

Lord Robert Cecil ne croit pas que cet inconvénient se produise en pratique à cause de la qualité des représentants diplomatiques dont il sera fait choix dans cette ville.

Après une intervention de Signor Orlando, l'amendement de Lord Robert Cecil est adopté.

Le deuxième amendement est le suivant: Au 4ème alinéa après les mots "des Délégués" (première ligne) ajouter les mots "ou dans les réunions du Comité Exécutif" et, à la cinquième ligne, après le mot "Délégués" ajouter les mots "ou du Comité Exécutif"; finalement, pour les mots "membres présents à l'Assemblée" substituer les mots "États représentés à la Réunion."

Ces amendements sont adoptés sans discussion.

Sur la demande du Président Wilson, les mots "périodiquement et" sont ajoutés après le mot "réuniront" à la première ligne de l'Article II.

Avant d'aborder l'Article III, Lord Robert Cecil demande que soit réservée pour une discussion ultérieure la question de la représentation des Dominions.

Sur l'Article III, le Président Wilson signale que le point critique réside dans la composition du Comité Exécutif. La composition idéale consisterait à ce que toutes les Puissances soient

représentées mais, pratiquement, cela ne sera pas possible car ce sont les Grandes Puissances qui auront toujours le plus de pouvoirs, notamment au point de vue économique et financier. En principe le rôle de ces dernières sera toujours de se joindre aux Puissances directement intéressées.

M. Vesnitch ne trouve pas équitable de donner une telle supériorité aux Grandes Puissances, surtout dans une Société des Nations qui ne devra pas présenter uniquement des intérêts matériels. Au point de vue moral il demande que les intérêts des Petites Puissances soient sauvegardés et que celles-ci aient toujours la possibilité d'être représentées. Leur représentation limitée à des cas spéciaux ne leur donnerait pas une satisfaction suffisante parce qu'elles seraient appelées comme parties intéressées et comparaîtraient comme devant des juges.

Lord Robert Cecil insiste sur le fait que le Conseil ne doit pas être trop nombreux; il signale qu'aucun systéme d'élection ne sera parfait et ajoute qu'une solution entre les Petites Puissances causerait aussi des mécontentements.

M. Hymans s'associe aux demandes de M. Vesnitch en faveur de la représentation des Petites Puissances et ajoute même que celles-ci n'accepteraient pas une solution qui leur serait très défavorable. Il rappelle le rôle historique des Petites Puissances et insiste sur l'intérêt qu'auront dans bien des cas les Grandes Puissances à s'associer leur mentalité afin de faire toujours prévaloir les idées de Droit. Il signale en outre qu'il ne faut pas oublier que dans un délai qui peut ne pas être très éloigné il faudra compter parmi les Grandes Puissances l'Allemagne et peut-être la Russie. Tout en préférant au dernier texte proposé, le système de la Commission Ministérielle française, ou le premier projet présenté par le Président Wilson, il déclare que son seul désir est de trouver une solution équitable.

Le Président Wilson demande à entendre l'avis des représentants des autres Petites Puissances.

Mr. V. K. Wellington Koo said that he had a few observations to make. So far as the League of Nations was concerned, no people was more anxious to see it successfully carried out than the Chinese. But on this particular question of the composition of the Executive Council, there were some serious considerations troubling his mind. While he fully endorsed the views of his Serbian and Belgian colleagues, in defense of the principle of the equality of States, he was also aware of the practical aspects of the question, and, for that reason, wished to add a few remarks of his own.

First, he did not wish to object to the permanent representation of the so-called Great Powers in the Executive Council, but he wished, however, to urge the recognition of the right of the so-

called secondary powers to representation on the Council. It was probably true that the interests of any so-called Great Powers were greater than those of any of the so-called secondary powers, it was certainly true that no one great power had interests greater than the aggregate interests of all the so-called secondary powers of whom there were more than fifty.

Furthermore, what the Commission was seeking, Mr. Koo added, was a League of Nations so organized that it would work successfully and smoothly. Caution therefore should be taken not to allow a gulf to grow between the so-called great and small powers. The secondary powers should not be allowed to feel that they were outsiders, so far as the Executive Council was concerned, and not fully part and parcel of the League. Nor should they be allowed to feel that unless they raised trouble or got in trouble, they would not be represented in the Executive Council; that, in other words, unless they became either aggressive or victims of an aggressor, they could not hope to receive an invitation from the Council to be present. He was sure that this was not the idea in the mind of any of those present.

In the third place, there were questions upon which Great Powers might clash in a division of any two on one side and three on the other. In such a case, if the so-called small powers were not represented therein, the Council would be deprived of the influence of world public opinion and find it difficult to effect a settlement of the question.

On these three grounds, Mr. Koo said that he preferred the American plan which allowed representation of the so-called secondary powers in the Executive Council.

M. Reis et M. Pessôa appuient la demande de leurs collègues belge, serbe et chinois, toutefois, M. Reis donne ses preférénces au premier projet américain.

M. Bourgeois indique, après avoir entendu les représentants des Petites Puissances, qu'il ne parle pas comme représentant d'une Grande Puissance, mais comme membre futur de la Société des Nations; il signale que le projet de la Commission française n'a été arrêté qu'après avoir passé en revue toutes les difficultés qui viennent d'être signalées. Il désire donc lui aussi trouver une transaction d'accord avec le premier projet du Président Wilson. Ce dont il s'agit avant tout ce n'est pas seulement d'établir la Paix, mais de l'établir sur le Droit et en tenant compte du grand rôle joué par plusieurs Petits États au cours de la guerre.

Signor Orlando reconnait qu'une exclusion pourrait être de nature à froisser la dignité des Petites Puissances et qu'en outre celles-ci pourront apporter une contribution importante à l'œuvre générale. La question aura d'ailleurs surtout son importance pour les votes et elle est visée à l'Article XIII où il est parlé d'unanimité.

En raison du danger du veto des minorités et de l'impossibilité d'aboutir par des majorités il estime que les décisions devront être rendues à l'unanimité qui a d'ailleurs toujours été obtenue au cours des Conférences interalliées pendant la guerre et qui seule donnera satisfaction à l'opinion publique sur laquelle devra s'appuyer la Société des Nations.

Il est décidé qu'une nouvelle rédaction de l'Article III sera préparée pour la prochaine séance qui est fixée à demain soir, 8h. 30.

The Italian Draft (Document 21) was probably before the members of the Commission at this Second Meeting on February 4. According to the French notes of the meeting, Scialoja mentioned it during the debate.[1]

At this Second Meeting of the Commission the British presented a paper of proposed amendments to various Articles, written in English and in French. For this paper see Document 22, in which are also my comments on certain of the proposals, which were written and delivered to Colonel House the next day, February 5. As part of this Document will be found also the second and third series of British amendments presented at the Fifth Meeting of the Commission on February 7.

The presentation of amendments in this manner was not unusual. It did not mean that the proposals were then brought up at the session of the Commission; it was rather what we would call a notice of proposed amendments, to be offered at the appropriate time in the discussion of the text. Thus, some of the earlier of these amendments proposed in Document 22 came up on February 4, others later.

[1] See p. 150.

CHAPTER XIII

THIRD MEETING OF THE COMMISSION

As shown above, it had been agreed at the Second Meeting of the Commission on February 4 that a new draft of Article 3, regarding the composition of the Council, would be presented. This redraft was made the next morning at a conference in Colonel House's offices at which he, Lord Robert Cecil, General Smuts, Signor Orlando and Mr. Koo were present, as well as Mr. Hurst and myself. At that meeting Colonel House handed me a draft which read as follows:

> The Executive Council shall consist of the representatives of the United States of America, the British Empire, France, Italy and Japan, to whom shall be added as soon as possible, four representatives of the other States Members of the League appointed by the Body of Delegates on such principles and in such manner as they think fit.
>
> Meetings of the Council shall be held at least once a year at whatever place it shall decide on, or failing any such decision at the capital of the League, and any matter within the sphere of action of the League or affecting the peace of the world may be dealt with at such meetings.

While this draft of House provided for four Small Powers on the Council, the draft agreed upon, which it was understood Orlando would present at the meeting of the Commission that evening, provided for only two Small Powers on the Council, which Cecil preferred.

The English text of the redraft of Article 3 as agreed on at the conference, was as follows:

> The Executive Council shall consist of the representatives of the United States of America, the British Empire, France, Italy and Japan, together with two representatives of the other States members of the League, appointed by the Body of Delegates on such principles and in such manner as they think fit. Pending the appointment of these two representatives of the other States, representatives of . . . . . and . . . . . shall be members of the Executive Council.

Meetings of the Council shall be held from time to time as occasion may require and at least once a year at whatever place may be decided on or, failing any such decision, at the Capital of the League, and any matter within the sphere of action of the League or affecting the peace of the world may be dealt with at such meetings.

Invitations shall be sent to any power to attend a meeting of the Council at which matters directly affecting its interests are to be discussed and no decision taken at any meeting will be binding on such Power unless so invited.

All matters of procedure at meetings of the Body of Delegates or the Executive Council including the appointment of Committees to investigate particular matters shall be regulated by the Body of Delegates or the Executive Council and may be decided by a majority of the States represented at the meeting.

The first meeting of the Body of Delegates and of the Executive Council shall be summoned by the President of the United States.

At the Third Meeting of the Commission on February 5 the foregoing was almost literally the text adopted for Article 3; but the number of the Small States to be on the Council was left blank, being reserved for further consideration; and the only amendment made was that suggested by Bourgeois to change the word "Capital" to "Seat" (French "Siège"). It will be observed that Article 3 as thus accepted included a paragraph (four), which was previously the last paragraph of Article 2, transferred from that Article.

An interesting illustration of what I have said about the French text during this period may be mentioned in connection with this redraft of Article 3. The group of five, a sort of self constituted sub-committee, made their redraft of Article 3 not only in English but in French and its French text read thus:

Le Comité Exécutif comprendra les représentants des États-Unis d'Amérique, de l'Empire Britannique, de la France, de l'Italie et du Japon ainsi que deux représentants des autres États adhérant à la Société, nommés par l'ensemble des Délégués selon les principes et de telle manière qu'ils jugeront convenables. Jusqu'à la nomination de ces deux représentants des autres États, les représentants de. . . . . et de . . . . . feront partie du Comité Exécutif.

Des réunions du Comité auront lieu de temps à autre lorsqu'il sera nécessaire et au moins une fois par an dans tel endroit qui

pourra être designé ou, faute d'arriver à une décision, dans la capitale de la Société; à ces réunions pourra être discutée toute question appartenant à la sphère d'action de la Société ou pouvant compromettre la paix du monde.

Des Convocations seront addressées à toutes les Puissances devant assister à une réunion du Comité à laquelle des questions concernant leurs intérêts doivent être discutées et aucune décision prise à une réunion ne liera une Puissance qui n'aurait pas reçu de convocation pour y assister.

Toutes questions de procédure lors des Assemblées générales des Délégués ou du Comité Exécutif y compris la désignation de Comités chargés d'étudier des cas spéciaux, seront déterminées par l'ensemble des Délégués ou par le Comité Exécutif et une décision pourra être prise par la majorité des États représentés à la réunion.

La première Assemblée générale des Délégués et du Comité Exécutif sera convoquée par le Président des Etats-Unis.

Now any one who compares the English text of this redraft [1] with the corresponding wording of the Covenant of February 14 (Articles 3 and 4) will see that it was very little changed; whereas the French text of this redraft of Article 3, as set forth above, was rewritten as to its language and, I may add, very considerably improved in the sense that the French became rather French French than English French.[2] The point is unimportant except to show that what all the members of the Commission on the League of Nations were thinking of was the English text of the Covenant and that the question of the precise wording of a French equivalent of this English text was left aside.

The Third Meeting of the Commission on the evening of February 5 continued the discussion of the draft by Articles through Article 6. Before the discussion commenced, Wilson, as Chairman of the Commission, stated that the recommendation for the four additional members of the Commission had been accepted by the Conference at the Quai d'Orsay as a matter of course and that he would notify the delegations of the Governments of Greece, Poland, Roumania and Czecho-Slovakia accordingly; and Wilson also yielded to the wishes of the French for a Secretariat and proposed by name its members as set forth in the notes of Mr. Shepardson, which I quote later.

[1] See p. 154 *sq.*

[2] See the text of Articles 3 and 4 in the Covenant of February 14, which is the Annex to the minutes of the Tenth Meeting of the Commission (Document 19, English, and Document 20, French).

Following these announcements, Orlando proposed the redraft of Article 3 in the English and French texts above quoted.

The difference of opinion as to the representation of the Small Powers on the Council continued and there were some sharp exchanges, particularly between Cecil and Hymans. As agreement was not reached, the question was left over for a later decision, when the views of the Small Powers were to prevail; the Article was passed with the number of Small Powers left blank and with the verbal amendment of Bourgeois mentioned above.

Article 4 was passed with some verbal and quite unimportant amendments [1] after very little debate. One of the changes made it clear that the Secretary General (then called Chancellor) was to be chosen by the Council. Hymans took occasion to mention the claims of Brussels as the Seat of the League. It is worthy of mention that no one questioned at all that the expenses of the League should be apportioned among its members as in the Universal Postal Union, a method which was subsequently found to be very unfair and even impossible for some of the smaller States and was changed accordingly.

Article 5, regarding diplomatic immunities, etc., was accepted without discussion or change from the Hurst-Miller Draft.

In the Hurst-Miller Draft, Article 6 read thus:

> Admission to the League of States who are not signatories of this Covenant requires the assent of not less than two-thirds of the Body of Delegates.
>
> No State shall be admitted to the League except on condition that its military and naval forces and armaments shall conform to standards prescribed by the League in respect of it from time to time.

Wilson opened the discussion by proposing to insert the following words at the beginning of the second paragraph:

> Only self-governing States shall be admitted to membership in the League; colonies enjoying full powers of self-government may be admitted; but

The debate took a very wide range. The British brought up the question of India; allusion was made to the former system

[1] For these textually, see the English minutes of the Third Meeting in Document 19.

of government in Germany, to that of the Philippines and even to that of Japan, inducing a retort from the usually silent Baron Makino. While Wilson hesitated as to the membership of India he did not finally object; no one else seemed to care; and as it appeared that India would come into the League as a signatory of the Treaty of Versailles and thus be outside the "self-government" definition in any case, the Article was passed with the Wilson amendments. Naturally no one was able to define "self-government" with complete accuracy, and the possibilities of a formula of definition were left for the future.

The difficulties of the debate regarding self-government were not lessened by the fact that it was conducted in two languages. The English-speaking statesmen admitted that it was impossible to say just what self-government is; and just how the idea lurking in the back-ground of this word or expression was to be stated in French was troublesome, as it proved to be later in connection with the French text. Some of the speakers mentioned "pays libres" and "non libres" and Bourgeois very aptly quoted from the French draft [1] regarding qualifications for membership:

> Nations . . . pourvues d'institutions représentatives permettant de les considérer comme responsables elles-même des actes de leur propre Gouvernement.

Some of the debate is to be found in the minutes of the Third Meeting in Documents 19 and 20, but all the proceedings of the evening are very much more fully reported in these notes of Mr. Shepardson:

> President Wilson advised the Committee that he had reported today at the Quai d'Orsay the recommendations of the Committee concerning additional members representing Roumania, Greece, Czecho-Slovakia and Poland, and that the Conference had accepted the Committee's recommendation as a matter of course. He would undertake to notify the delegations of these Governments so that their nominees might be present at the next meeting of the Committee.
>
> He recalled M. Bourgeois' desire that a Secretariat should be appointed and stated that he would be perfectly willing to attend to the appointment. There were no objections. A Secretariat

[1] See Annex II to the French minutes of the First Meeting in Document 20.

was named consisting of: M. Ricci Busatti, M. Clauzel, Lord Eustace Percy and Mr. Shepardson.

ARTICLE III

The attention of the Committee was directed to the redraft of Article Three. Copies of both English and French texts were distributed.

Signor Orlando moved its adoption, called attention to the provision giving five representatives to the great powers and two to the small powers. He stated that questions which affected world stability were most likely to arise among the great powers.

M. Hymans asked indulgence while he read a paraphrase of his own. A certain remark of Lord Robert Cecil's concerning a possible rift between the great and small powers had led him to consider how this might be avoided. He proposed that the great powers should have five and the others should have five. He wished to call attention to the fact that the Delegates of the small Powers sitting on the Executive Council were elected by the whole Body of Delegates. In such an election the great powers would have a voice, so that it would not be, as might first appear, a matter for the small powers alone. The whole Body of Delegates, recognizing the high intellectual attainments or high character of certain possible candidates of the smaller nations, would have a decided influence. He further thought that sooner or later other powers might take shape, and be properly described as great powers, and if their number became six or seven, so the representation of the smaller nations should increase *pari passu*. Such a plan would promote great cordiality in the acceptance of the plan and performance under it.

Lord Robert Cecil asked if it was within his imagination that Germany might come in as a great power. To this there was a general demurrer.

M. Larnaude wanted it clearly understood that no implications were carried by the use of the terms "great powers" and "small powers." It was only a convenient form of expression for dealing with a certain difference in fact. Indeed, he thought that the use of the general terms "great" and "small" was inadvisable, and that it was proper that the five powers (whom they were classing as great) should be specifically named. For the League is the outcome of this war. Of course the five powers are not the only ones who have made vast contributions of lives and principle. Belgium, the first bulwark against German invasion, has gained because of this a great place in history. But the matter is not one to be discussed in the abstract or on the basis of sentiment; but a thing of cold fact; and the fact is that the war was won by Great Britain, France, Japan, Italy, and the United States. It is

essential that the League be formed around these effective powers so that at its birth, it shall carry with it the influence and prestige of the nations that conquered Germany.

President Wilson called attention to the fact that disagreement now centered only around the number of delegates on the Executive Council ascribed to "smaller nations."

M. Vesnitch: The principal point appears to be resolved; the named great powers are to get five members on the Executive Council. He himself will not make his acceptance or rejection of the Article hang on a question of numbers; but before a vote is taken he must express his view that the small nations should be accorded four. In the first place, he believed that it would create a better impression throughout the world if this were done. In the second place, though he made the suggestion with diffidence to the great powers, still he was bound to say that he thought it would promote better spirit and greater harmony of action. Again, he believed that it would make it more attractive for those who will be later considering the idea of entering the League of Nations.

Lord Robert Cecil: Any question of numbers is a hard one to decide. It is difficult to say that two is better than five or four is better than three. The League which is about to be formed is a great experiment, yet one that we are anxious to see succeed. It would be more likely to succeed if we attempted too little rather than too much. He hoped that there would be nothing final in the League as drafted; and sincerely expected that some way would be provided for the League to amend its own Constitution. In that event, the good parts would subsist and the bad parts die away. Assuming this, and urging prudent beginnings, he was inclined to favor a representation of two rather than four.

M. Hymans: The chief point is to impress the world by the fairness of the Covenant. The world of right would be impressed by this suggested equality. In such a question, the dignity of nations (and of his own nation) is at stake. If the present ratio were adopted the world would say—five to the great nations and two to the small nations as a "beau geste." He felt that equality of representation on the Executive Committee would be preferable; but he would be satisfied if small nations got four. What would the world say if five nations received a total of five delegates and twenty remaining nations received a total of two.

M. Bourgeois spoke in support of M. Larnaude's remarks. The League is founded on and is the outgrowth of the war. During its course the five nations have made a league of nations after a sort; they have fought, actuated by a single idea. Now it is important that it be made known to the world that they are creating this League under the influence of a single idea. Though the influence and importance of the small nations, when aggregated,

is considerable, yet the world, actually, is waiting to see what the great nations will do. It is therefore important that a clear majority in the Executive Council be accorded to them. Though it is not to be disputed that the influence of all the small nations, when taken together, is great and imposing, yet as a matter of fact, their total population and their total power falls considerably short of that of the five Great Powers.

President Wilson: We are leaving out the consideration of the important fact that all matters may be transferred from the Executive Council to the Assembly of Delegates. This is a considerable guarantee of the position of the small powers.

General Smuts: People will perhaps scrutinize the make-up of the Executive Council more closely than any other point. The people of the Great Powers, whose interests are, in reality, most likely to be affected, will see that they have representatives constantly sitting. On the other hand, the people of small powers will see that whenever a question arises affecting their interests, they are to be called in.

M. Bourgeois: The trouble with that suggestion is that the small powers have no vote. They do not even take part in the discussion; they are only heard.

General Smuts: I had assumed that they would vote.

President Wilson: No, this provision has not the importance for the small powers that you attribute to it. They only, as the text says, "attend." They don't vote.

General Smuts: Really the point is academic, since the decision of the Executive Council must be unanimous.

President Wilson: It doesn't so appear.

Lord Robert Cecil: It is implicit in the article. All international decisions must by the nature of things be unanimous.

General Smuts: My objection is this: suppose two great powers are in dispute. If the small powers are represented by four, then since the two great cancel each other, the vote will in reality be four small against three great, and they can swing the decision.

Lord Robert Cecil: I should advise going slow on the proposal to give the small powers four representatives. Our chief object is to make the League a success. The chief need in making the League a success, is the support of the Great Powers. It must be attractive to them all. Frankly, the small powers will, in all likelihood, join anyway. In view of this, I should advise caution before we extend the representation of small powers. The article can well await further elaboration, until the League is formed. If, for example, the League should be decided upon as containing an Executive Council with an equality of members, the great and small powers, there would be a real risk of one or two great powers holding out.

M. Hymans: What you propose is nothing else than the Holy Alliance.

M. Vesnitch: At the last Hague Conference, there were forty-four states represented. The number after the war will be even greater—perhaps fifty. It will certainly look odd to tell the world that we have decided to give five representatives in all to five nations and two in all to the remaining forty-five. I cannot agree, either, with M. Larnaude, that the war has been won by the five Great Powers. By this I do not mean to suggest that the five have not played the principal part. But I do object to M. Larnaude's assumption that these five are the only nations that fought for the right. If the number of four representatives which I suggest for the smaller powers be diminished it will certainly create a most unfavorable impression throughout the world at large. As for Lord Robert Cecil's objection, I cannot bring myself seriously to believe that Great Britain and her parliament will oppose the proportion of five to four.

Lord Robert Cecil: There seems to be a curious misapprehension through all the discussion. The Executive Council is not the whole thing. If I were to give an offhand statement as to its functions, I would say that it is only the first in order in the settlement of disputes, and is chosen as a small group in order to arrive at a decision quickly. By the provisions of the text, matters arising under Articles 16, 17, 18, and 20 can be referred to the Body of Delegates at any time. Thus M. Hymans' description of this Covenant as creating a new Holy Alliance is an exaggeration, if not a wholly false description. The real security for the small nations must be the sense of justice of the large ones. And as for the possibility of a split between great and small, practically such a thing will not occur. The question we have to resolve is this, what kind of an Executive Council will produce the most favorable impression and will facilitate the acceptance of the project and facilitate its adoption by the greatest number of countries. Is the chance of injuring the chances of the League greater if we have four for the smaller nations or two?

I venture to suggest that since there is a great and fundamental difference of opinion between us on this subject, that we pass the rest of the clause and return later in our deliberations to decide exactly what the representation of the smaller states will be.

President Wilson: Before we do this, however, I should like to point out that in a later article the High Contracting Parties guarantee the political independence and territorial integrity of each State member of the League. There you have a definite guarantee given at the outset of the League's formation. With such a provision, agreed to by great and small powers alike, it is difficult to conceive of any injustice that could be done to the

small powers by having only two representatives on the Executive Council.

If there is no objection, we will consider the Article adopted, with a reservation upon the number to represent the small powers.

M. Bourgeois: I should like to suggest that the word "capital" be striken out, and the word "siège" substituted (English "seat") in this Article and throughout the text.

President Wilson: Before this Article is voted upon, I should like only to remark that, though I greatly appreciate the compliment which is paid my country in the last provision of this Article, the provision did not, of course, emanate from the American delegation.

If there is no objection, the Article, with M. Bourgeois' suggested change, is adopted.

ARTICLE IV

President Wilson read the Article. He suggested that the words: "Subject to confirmation by the Executive Council" should be added after the first paragraph, so that it would read "The Secretariat . . . under the control of a Chancellor of the League by whom they shall be appointed subject to confirmation by the Executive Council."

M. Vesnitch: It doesn't seem to appear who is going to appoint the Chancellor.

General Smuts: I should say that the Article carried the implication that this would be by the Executive Council.

M. Bourgeois: I agree; it is an administrative matter only.

President Wilson: It would be better to put it in. If there is no objection we will change it to read after "Chancellor"; "chosen by the Executive Council, by whom they shall be appointed, subject to confirmation by the Executive Council.". . . I have just been handed a note by my legal advisor who tells me that in order to be technically correct we must strike out the words after "members" in the last clause and substitute the words "of the Universal Postal Union of the expenses of the International Bureau of the Universal Postal Union." (These two amendments were accepted.)

M. Hymans: I note that the seat of the League is not yet fixed. Perhaps this is intentionally left open. However, I do not wish to let the occasion pass without expressing the great desire of the Belgian Government and a large number of Belgian organizations that Brussels should be the seat of the League. It is unnecessary for me to describe to you the merits of the city, or to point out the great moral value to be secured by putting the seat of the League in the capital of Belgium. It would be a symbolic decision.

President Wilson: While I am sure that the Commission has heard M. Hymans' proposal with great sympathy, it would be better to reserve this question until a later time. If there is no objection we will consider this Article adopted as amended and pass on to Article V.

ARTICLE V

This Article was adopted without modification or discussion.

ARTICLE VI

President Wilson, after reading the Article, proposed the following amendment: to add at the beginning of the second paragraph the words "only self-governing States shall be admitted to membership in the League; Colonies enjoying self-government privileges will be admitted; but no State" . . . etc.

M. Bourgeois: This Article provides admission by two-thirds vote of the Body of Delegates. An important question is raised by this provision. It strongly seems to me that in the case of the admission of a new State, it should be by unanimous vote. There should be no doubt left as to the character of the new member. That member should be without reproach. However important it may be to introduce the condition of self-government, the moral test is the true and final test, and unanimity should be the measure.

Lord Robert Cecil: "Self-government" is a word which is hard to define, and it is hard to judge a country by this standard. For example, on paper the Reichstag was a democratic institution; in a few years' time the Reichstag could have converted Germany into a constitutional government in the true sense of the word. If it were desirable, it would be a hard thing to fix upon a form of words that would exclude Turkey and Bulgaria. The bare use of the word "self-governing" is therefore unfortunate. The President's amendment admits self-governing colonies; but what of the Indian Empire? She mobilized a million men and made a valuable contribution to the Allied armies. Part of India is autocratically governed—yet that part is willingly so governed, and incontestably the great part is democratically administered. The British Government has treated India according to her colonial program. She has set up an imperial council for India which appears to be the thing India needs at the present stage of affairs. If the League of Nations were to employ words which would arbitrarily exclude India, it would be taken by those people as a bitter insult. I am free to tell you that there is a spirit of unrest abroad in India of a serious character. The British Government is trying just as rapidly as possible to advance India into a self-governing colony; and for anything to happen which would ex-

clude India would be unfortunate indeed. I would therefore suggest instead, that at the end of the first paragraph the following words be added "and by a like majority the League may impose on any States seeking admission such conditions as it may think fit." If this were done, the League might say to some State, you are too military; to another you are too despotic, etc. If such a general amendment be made, particular and appropriate conditions thereunder may be laid down in each case.

President Wilson: I have spent twenty years of my life lecturing on self-governing states, and trying all the time to define one. Now whereas I haven't been able to arrive at a definition, I have come to the point where I recognize one when I see it. For example, regardless of how it appeared on paper, no one would have looked at the German government before the war, and said that the nation was self-governing. We knew that, in point of fact, the Reichstag was controlled by the Chancellor, that it was an absolute monarchy. On the other hand, some governments are in terms less liberal than Germany was, and yet we would agree in calling them self-governing.

We have said that this war was carried on for a vindication of democracy. The statement did not create the impulse but it brought it to consciousness. So soon as it was stated that the war was being waged to make the world safe for democracy, a new spirit came into the world. People began to look at the substance rather than at the form. They knew that governments derived their just powers from consent of the governed. I should like to point out that nowhere else in the draft is there any recognition of the principle of democracy. If we are ready to fight for this, we should be ready to write it into the covenant.

For myself, I have a great admiration for India's performance. The spirit which she has shown is fine. Nevertheless, the impression of the whole world is that she is not self-governed, that the greater part is governed by the laws of Westminster, and the lesser part is governed by princes whose power is recognized and supported by the British government, within certain limits. Therefore, even though it may be hard to exclude India, still we ought to recognize that all governments derive their just powers from the consent of the governed.

The moral test which M. Bourgeois demands is of course right, but it is hard to define we should have to say "one who has not made proper reparations for wrongs committed" etc. Such a test might not be too difficult to lay down in one or two marked cases. But it seems to me that it would be very hard to define in other less clearly marked circumstances.

Returning to the matter of India, I should like to urge consideration of this single case. The difficulty in my mind is that if

India is admitted on any principle, that principle would probably extend to the Philippine Islands. Under the definition which I have proposed, the Philippines would be excluded. This seems right to me. For though it is the intention of the United States to grant them political freedom at the earliest practicable date, and since they are now satisfied with the stage at which they have arrived, still I think it would be unwise to admit them at present. . . . I should be sorry not to see some recognition of the principles of self-government in the Covenant.

General Smuts: It seems to me, Mr. President, that the Covenant itself takes care of the case of India. She would come in under the first paragraph, as signatory to the Covenant, and whatever conditions we may lay down with regard to subsequent members would not affect her.

Lord Robert Cecil: My legal advisor is not here. Do you think, Mr. President, that the first paragraph is exclusive of the second?

President Wilson: It seems so to me as I read the Article. The amendment now reads: "Only self-governing states shall be admitted to membership in the League. Colonies enjoying full powers of self-government may be admitted, but no state . . ."

M. Léon Bourgeois: What of countries which do not enjoy full self-government? The definition is difficult. I should suggest the wording "Unless the government is responsible to the nation." Whether the form of the government is republican or monarchial makes no difference. The question ought to be, is this Government responsible to the people? We are establishing not a League of Governments but a League of Nations.

M. Larnaude: You are raising a difficult question of "droit publique." It is the kind of question which will have to be asked in each instance. For example, I believe I am right in saying that Japan has not a responsible government. Yet there is no intention of shutting her out.

Baron Makino: The Minister is responsible to the Emperor, and also to the people.

M. Orlando: This is an exceedingly hard matter to define. You can't say "parliamentary" very well, because that is not the true test, and we may want some nations in the League whose government would not come within this class. You can't say "free government" ("pays libres") because that doesn't take into consideration its external relations.

M. Bourgeois: I only said a "government responsible to the people."

President Wilson: In the original American draft it was written "Only states whose governments are based upon the principle of popular self-government." Some such phrase is desirable. I think that it is better expressed in the amendment which I have

offered. While "self-government" is not susceptible of definition, neither is "free." But we all know when a government is properly described by one of these phrases. It is better to take a simple expression, and I believe that "self-governing" more nearly approximates the idea we want to express.

M. Larnaude: I once delivered fourteen lectures on "pays libres" and "non libres." Germany is not, or was not, a "pays libre."

President Wilson: It seems to me that the ideas we are after are expressed as accurately as possible in the amendment.

Lord Robert Cecil: Since President Wilson has expressed the hope that India might be a member of the League under this reading, and since it is his interpretation, that, irrespective of conditions, she would come into the League under the first clause, I am in favour of it.

M. Bourgeois: I am strongly in favour of including a reference to "those who have reparations to make." And those violators of law who have acted like Germany ought also to be specifically provided for. They cannot be admitted on a par, or under a blanket provision covering all states. And this in addition to a provision regarding character.

M. Larnaude: It seems to me very important that the things insisted upon by my colleague should be included.

President Wilson: Even all the states now here associated are not regarded by all other states as having good characters. We ought not to pass an act of oblivion by putting up standards that we have not always lived up to ourselves. As for the wording of the Article, I suggest that the Article be considered as provisionally adopted on the understanding that the question of a definitive formula on the point we have been discussing should be further considered.

(With this exception the Article was adopted, retaining President Wilson's amendment.)

CHAPTER XIV

FOURTH MEETING OF THE COMMISSION

THE Fourth Meeting of the Commission, on the evening of February 6, was the first at which its four added members were present: Veniselos of Greece, Dmowski of Poland, Diamandy of Roumania and Kramář of Czecho-Slovakia. The English minutes (Document 19) say that at the opening of the session Bourgeois mentioned that he might return later to the matter of qualifications for membership under Article 6. My own note as to this reads thus:

> Articles 1-6 have been adopted with reservation as to members in Council and right to return generally. Also reserve as to Article 6 as suggested by Bourgeois.

The Fourth Meeting went through and passed with various changes six Articles of the Hurst-Miller Draft, namely, 7 to 12 inclusive. The chief discussion was about Article 7, later the famous Article 10 of the Covenant. The account of the discussion in the minutes is rather summary. My own notes, written as the debate went on, indicate its general character:

ARTICLE VII

Cecil suggests as to the extent of the obligation which means war if it means anything.

Wilson thinks the words add little to the implied obligation of the whole Covenant.

Orlando supports the Article.

Larnaude thinks it imports only a principle.

Wilson thinks the obligation is central but recognizes its serious character.

Smuts thinks it goes further than anything else in the document.

Wilson thinks a matter of right can go through the Senate. He thinks there must be a provision that we mean business and not only discussion. This idea, not necessarily these words, is the key to the whole Covenant.

Vesnitch: He speaks of the psychological and political effect of the provision which he supports.

Cecil thinks that things are being put in which cannot be carried out literally and in all respects.
Wilson states the legal question correctly.[1]
Orlando speaks in favor of the amendment.
Larnaude suggests an amendment.
Wilson suggests an amendment.
Finally accepted with Wilson's amendment as modified.
Add to Article VII:

> In case of any such aggression the Executive Council shall advise the plan and the means by which this obligation shall be fulfilled.

I answered directly to Colonel House and President that Article VII is constitutional.

Cecil was opposed to the guarantee and wanted to strike it out.[2] Wilson and Orlando defended it. Larnaude finally took a middle ground. His second proposal is not correctly stated in the minutes; it read as follows:

> Les H. P. C. prennent l'engagement réciproque de respecter et de préserver contre toute aggression l'intégrité territoriale et l'indépendence politique existante de tous les États adhérents à la Société, par les moyens et sous les conditions qui sont déterminés par les articles suivants.

The result was an Article 10 (then 7), which read thus, almost its present text, the amendment of the meeting adding the second sentence:

> The High Contracting Parties undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League. In case of any such aggression, the Executive Council shall advise the plan and the means by which this obligation shall be fulfilled.

However, the discussions of this Article led directly to the insertion in the Covenant of what is now Article 19, providing for recommendation by the Assembly as to revision of treaties, the principle of which was suggested by Cecil during this debate. The text of Cecil's proposal is not in the minutes. As shown in Document 22, it would have added the following words:

[1] As to this remark, see p. 170
[2] See as to this the minutes and also Document 22.

> Subject, however, to provision being made by the Body of Delegates for the periodic revision of treaties which have become obsolete and of International conditions, the continuance of which may endanger the Peace of the world.

I may refer in this connection to Cecil's remarks to me concerning his views of the matter on January 21.[1]

In the debate, as my notes show,[2] Wilson expressed the opinion that the provision could go through the Senate. It is easy to look back now and see that he might have gone farther in meeting Cecil's view.

Another reference to the remarks of President Wilson in the debate on this Article is in my comments on the Belgian proposals of amendments which were circulated at this meeting of the Commission and to which I shall refer later.[3] These comments of mine were written after the meeting, but during the same night. I mention in them that the President "pointed out in his remarks of February 6 (that) the covenants of Article 7 may in many cases be fulfilled without the necessity of war." It was of this observation that my notes [2] say "Wilson states the legal question correctly."

While I cannot give the language that Wilson used, it is appropriate here to say that the very general notion that Article 10 of the Covenant is a guarantee against invasion is entirely erroneous. I call this a "very general notion" because it was even asserted in the debates of the First Committee of the Fourth Assembly.

It has been very frequently pointed out by careful students of the Covenant that its provisions do not go so far as to inhibit war in every case. Legally speaking, war in certain circumstances is permissible under the Covenant (Article 15, paragraph 7); and with a permissible war there could of course be a permissible invasion. On this point, I refer to Oppenheim.[4]

At the time of the Fourth Meeting of the Commission on February 6, Article 8 was, as it is now, the Disarmament Article. One of Wilson's original proposals was the abolition of conscription (see Document 9, Article 4). This he had abandoned, as I have previously shown [5] (see in this connection Article 4

[1] See p. 52 *sq.*
[2] See p. 168 *sq.*
[3] See p. 176 *sqq.*
[4] *International Law*, (3rd ed., 1920), vol. i, p. 739.
[5] See p. 65.

of his Third Paris Draft, Document 14). In this respect the Hurst-Miller Draft was similar to the draft last mentioned, its first paragraph reading thus:

> The High Contracting Parties recognize the principle that the maintenance of peace will require the reduction of national armaments to the lowest point consistent with domestic safety and the enforcement by common action of international obligations; and the executive council shall formulate plans for effecting such reduction. It shall also enquire into the feasibility of abolishing compulsory military service and the substitution therefor of forces enrolled upon a voluntary basis and into the naval and military equipment which it is reasonable to maintain.

But even the allusion to a possible abolition of compulsory military service was objected to; and Wilson at once proposed to strike out the last sentence of the paragraph above quoted and to substitute for it a paragraph taken literally from his Second Paris Draft (Document 9), the third paragraph of Article 4 of that draft:

> The Executive Council shall also determine for the consideration and action of the several governments what direct military equipment and armament is fair and reasonable in proportion to the scale of forces laid down in the programme of disarmament; and these limits, when adopted, shall not be exceeded without the permission of the Body of Delegates.

This provision indeed was in all of Wilson's Paris drafts in almost the same language. It was one of the paragraphs left out of the Hurst-Miller Draft which Wilson regarded as important, and rightly so, I think. He now sought to restore it; the proposal was accepted and stayed in the Covenant, though the language is somewhat changed in the final text.[1]

Wilson's Paris drafts had contained an agreement against the manufacture of munitions by private enterprise. The Hurst-Miller Draft had left this out, also, its second paragraph of Article reading thus:

> The High Contracting Parties further agree that there shall be full and frank publicity as to all national armaments and military or naval programmes.

[1] Cf. paragraphs 2 to 4 of Article 8 as it now reads.

In a milder form, Wilson now succeeded in restoring to the Covenant a clause against private manufacture of munitions, so that the last paragraph of this Article 8 would read thus:[1]

> The High Contracting Parties further agree that munitions and implements of war should not be manufactured by private enterprise, and direct the Executive Council to advise how this practice can be dispensed with; and further agree that there shall be full and frank publicity as to all national armaments and military or naval programmes.

I have called this a Wilson amendment, for he proposed it, as the minutes state; although my notes on the discussion of this Article, which follow, speak of it as having been proposed by Cecil:

ARTICLE VIII

Wilson speaks of the Article generally and then of private munition making which he objects to—proposes amendment.

Orlando suggests amendment.

Wilson suggests change.

Chinda suggests *national* instead of *domestic,* 3rd line.

Wilson speaks as to force France should agree to maintain.

Wilson's amendment is to strike out after *reduction* in 5th line and insert.

National substituted for *domestic* and accepted.

Cecil proposes an amendment—accepted and Article VIII accepted as amended.

What happened was this: Cecil wrote out and handed to Wilson a draft, reading as follows:

> The H. C. P. further agree that munitions and implements of war should not be manufactured by private enterprise and direct the Executive Council to consider how this practice can be dispensed with and further agree

Wilson changed "consider" to "advise," as the original draft, which is still in my files, shows, and then read the proposal which was accepted.

The only other change made in the Disarmament Article was in its first clause, substituting the words "national safety" for "domestic safety" on the proposal of the Japanese;[2] the change

[1] Cf. the last two paragraphs of Article 8 of the present Covenant.

[2] Made by Viscount Chinda, according to my notes above quoted and to the French minutes; by Baron Makino according to the English minutes.

is of some significance; certainly "national" is here a word of broader import than "domestic."

Article 9 of the Hurst-Miller Draft (now Article 11 of the Covenant) was passed without change; seemingly there was no discussion of it. All that the minutes say is: "This Article was adopted without amendment" and my notes are limited to the one word "Accepted." Perhaps the significance of the Article was not appreciated. Certainly in the working of the League up to this time it has been of very great value; and it is of interest to recall here that its opening sentence originated in the House Draft [1] and was expanded by Wilson in his Washington Draft;[2] the second paragraph was added by Wilson in his First Draft at Paris.[3]

The present Article 12 of the Covenant with its agreement to submit international disputes either to a tribunal of some sort or to the Council of the League and to defer hostilities at least for three months until after the resulting decision or recommendation was number 10 in the Hurst-Miller Draft. In the debates of this Fourth Meeting of the Commission there was no dissent from the principle of this Article. It was agreed on Cecil's suggestion that a clause should be inserted for a time limit for the decision or recommendation;[4] the Secretaries were instructed to draft this. The English minutes of the discussion of this Article are clear as to the action taken:

> M. Bourgeois pointed out that situations might arise in which the responsibilities of the members of the League under this article might be doubtful as the draft now stood. A note was taken of this point for further consideration. The question raised by this observation would be considered more carefully in a discussion of Article 13.
>
> Mr. Orlando observed that a good deal of the strength of the project was contained in this article, inasmuch as the League of Nations should above all else be supported by public opinion. Intentionally moderate as it might be, he approved the draft, reserving the right in connection with the discussion of Article 13 to suggest such amendments as might be advisable.
>
> Lord Robert Cecil pointed out that no time limit was provided for within which an award of arbitration or recommendation of

[1] See p. 14 *sq.* and Document 2.
[2] See p. 16 *sq.* and Document 3.
[3] See Document 7.
[4] A time limit clause was in the British Draft, Chapter II, 1 (b) (Document 10), in Wilson's Second Paris Draft, Article 5, (Document 9) and in the Cecil-Miller Draft, Article 5 (Document 12).

the Executive Council must be made. It was agreed that the Secretaries should be instructed to draft an amendment stipulating, in the case of arbitration, an award within a reasonable period, and in the case of consideration by the Executive Council, a recommendation within six months.

On the other hand, the minutes above quoted are obscure as to the point made by Bourgeois. It would seem that he advocated a more stringent, perhaps an absolute, agreement against war, and the remarks attributed by the minutes to Orlando seem to confirm this; certainly my notes of the discussion under this Article do, despite their very condensed form:

ARTICLE 10

Accepted.
Note that a limit must be fixed.
Cecil: A reasonable time to be determined by arbitrators.
Six months for Executive Council.
Bourgeois raised the point of no war.
Cecil opposes the idea as going too far.

Of course this Article and its effect are very intimately connected with subsequent Articles; for example, it refers to a recommendation by the Council; and the legal effect of such a recommendation is stated in what is now Article 15; so inevitably any discussion of the earlier provision at this stage could be only preliminary.

Article 11 of the Hurst-Miller Draft adopted the principle of voluntary as distinguished from obligatory arbitration of international disputes; in a form considerably expanded it now appears as Article 13 of the Covenant. Again the language is closely related to subsequent provisions and the Commission accepted it with an addition proposed by Cecil. All that the English minutes say of the discussion is this:

ARTICLE 11

This article was considered as closely connected with Article 10.

Lord Robert Cecil proposed the following new paragraph as an amendment:

"For this purpose the court of arbitration to which the case is referred shall be the court agreed on by the parties, or stipulated in any convention existing between them."

Cecil's proposal was accepted; my notes say merely that Article 11 was "adopted with British amendment"; and the amendment in a slightly different wording became paragraph 3 of Article 13 of the Covenant in the Treaty.

Article 12, the Article for a Permanent Court, now Article 14 of the Covenant, was accepted by the Commission as written in the Hurst-Miller Draft with the addition of two words "when established" and with a grammatical amendment to the English text, the latter change being to correct "will" by "shall"; my notes say only "adopted with amendment" and the French minutes make no mention of any change at all.

It is worth while to reproduce here the English minutes of the discussion:

ARTICLE 12

President Wilson's proposal to substitute the word "shall" for the word "will" throughout the article was adopted; likewise the addition of the words "when established" after the second "shall."

Mr. Bourgeois made note of the fact that the draft made no mention of the Permanent Court of Arbitration at The Hague, established at the Conference of 1907 with the joint approval of all the Delegates of the countries represented on the Commission. He reminded the Commission of the services rendered by bodies established at The Hague, notably the Commission of Inquiry at Hull in the Doggerbank incident, and the arbitration in the Casablanca, Carthage, and Manouba incidents.

Mr. Batalha Reis expressed his entire agreement with Mr. Bourgeois' observations.

Note was made of this observation.[1]

President Wilson added that unquestionably, in the creation of a permanent court of international justice, consideration would be given to the existence of and the services rendered by the Permanent Court of Arbitration at The Hague.

The remark of Wilson above quoted was prophetic; in Article I of the Court Statute are found these words:

> This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague in 1899 and 1907.

With this the meeting adjourned, at 11:30 my Diary says. However, I had still some hours of work at my office; part of it

[1] Meaning the observation of Bourgeois. The previous remark of Reis was inserted after the minutes were first written.

was the consideration of the Belgian amendments which I mentioned above,[1] for they were probably to come up at the following meeting. As circulated on February 6 they were as follows:

> Article 13. In the second paragraph for the words:
> "If the report is unanimously agreed to by the members" substitute the words:
> "If the report is agreed to by the majority of the members".
> Strike out the words:
> "If no such unanimous . . . just and proper," substitute the words:
> "If the report is unanimously agreed to by the members of the Council others than the parties to the dispute, the H. C. P. agree that they will carry out in full good faith the decision that has been rendered."
> Article 14. In the first paragraph, second line, strike out the figure X after the word Article, substitute figures VII, X, XI, XIII.

> Article 13. Dans le deuxième paragraphe remplacer les mots:
> "Si le rapport est approuvé à l'unanimité par les membres" par les mots:
> "Si le rapport est approuvé par la majorité des membres."
> Supprimer le mots:
> "Si ce rapport ne peut . . . appropriées," y substituer:
> "Si le rapport est voté par l'unanimité des membres autres que les parties au conflit, les H. P. C. convennient d' exécuter avec bonne foi la décision qui aura été rendue."
>
> Article 14. Dans le premier paragraphe, remplacer après le mot "Article" (2ème ligne), le chiffre "X" par les chiffres "VII, X, XI, XIII."

These Belgian proposals regarding Article 13 (now 15) would not only have given legal effect to a report of a *majority* of the Council regarding a dispute instead of to a unanimous report only, but would have greatly increased the legal effect of the report itself; and regarding Article 14 (now 16) they would have very much extended the cases in which the sanctions of that Article would be applicable.

I did not think well of the Belgian amendments and the memorandum which I wrote about them was as follows:

> The first amendment proposed to Article XIII (now 15) would make a majority report instead of a unanimous report of

[1] See p. 170.

the Executive Council one which would bind the parties not to go to war with a Power complying with its recommendations.

The second amendment proposed to Article XIII would change entirely the character of a unanimous report of the Executive Council. Not only would it be within the covenant against going to war, but it would become a binding decision and would thus be a form of compulsory arbitration effective as such when the members of the Executive Council were unanimous.

The amendment proposed to Article XIV (now 16) would extend the sanctions of Article XIV to a breach of the covenants of Article VII (now 10) Article XI, (now 13) and Article XIII, (now 15) as well as Article X (now 12).

The amendment already adopted to Article VII is a valid reason against the extension of the sanctions of Article XIV to the covenants of Article VII. Furthermore, as the President pointed out in his remarks of February 6, the covenants of Article VII may in many cases be fulfilled without the necessity of war; and it is equally clear that in many cases they might be carried out without the necessity of the sanctions of Article XIV.

Clearly, the sanctions of Article XIV should not be extended to the covenants of Article XI, which only provide for the submission of disputes to arbitration which the parties recognize as suitable for that form of regulation.

There are several reasons why the covenants of Article XIII should not be supported by the sanctions of Article XIV. There is a covenant in Article XIII not to go to war, but the sanction for this covenant is covered by the sanction for the covenants of Article X; there are other covenants in Article XIII which should not be supported by the sanctions of Article XIV; for instance, there is a covenant to "refer the matter to the Executive Council," and a covenant to "communicate to the Chancellor statements of their case." It is clearly not the intention of the agreement that the drastic provisions of Article XIV should apply in case of a breach of either of these covenants.

So far as the sanction proposals (then Article 14, now 16) were concerned, my views were that they should be softened and limited rather than expanded. I discussed the matter with Colonel House on the afternoon of February 7 and expressed to him my ideas and hesitation about the Article. At his request I drew up a suggestion about the text and handed it to him before the meeting that evening. The text that I wrote was this:

> Should any of the High Contracting Parties be found by the League to have broken or disregarded its covenants under Article X, (now 12) it shall be deemed thereby to have committed a hos-

tile act against all of the other members of the League. In any such case, the Executive Council shall advise as to the steps to be taken to bring about the severance of all trade and financial relations with the covenant-breaking State, and the prevention, so far as possible, of all financial, commercial and personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not.

The Executive Council in such a case shall also recommend what effective military or naval force the members of the League shall severally contribute to the armed forces which may be needed to protect the covenants of the League.

The Executive Council shall also advise as to the mutual support necessary in any financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting therefrom, and shall also advise as to the mutual support necessary in resisting any special measures aimed at one of The High Contracting Parties by the covenant-breaking State.

With the suggestion I wrote the following note to Colonel House:

> The language of this suggestion as to Article XIV (now 16) is based to some extent on the amendment to Article VII (now 10) made last evening.
>
> In the Article as now before the Commission the first two paragraphs were from the President's draft, the third from the British draft, and in the suggestion a portion of the third paragraph is omitted.

It will be seen from this that my idea was to substitute consideration by the Council of economic and financial sanctions in place of any positive agreements to put them into force. In view of the enormous practical difficulties that have been shown to exist in any automatic plan of economic sanctions, the idea still appears to me to have some merit. Indeed the resolutions of the Second Assembly in 1921 regarding Article 16 of the Covenant tend in that direction.

CHAPTER XV

FIFTH MEETING OF THE COMMISSION

The Fifth Meeting of the Commission was held on the evening of February 7; Articles 13 to 15 (now 15 to 17) were passed with a few changes, subject, however, to a reference to a Sub-Committee (composed of Bourgeois, Cecil, Hymans and Veniselos) of certain suggestions as to Articles 13 and 15 made during the debate.

The action taken at this Fifth Meeting regarding Article 13 of the Hurst-Miller Draft (now 15) is set forth as follows in my notes:

ARTICLE XIII

Read by President.

Cecil proposes British amendment—at end of first paragraph insert, "and the Executive Council may forthwith direct the publication thereof."

Vesnitch proposes to insert after word "Chancellor," par. 1, line 7, "as promptly as possible."

Adopted.

British amendment adopted.

Wilson proposes amendment, "and the privilege of the minority" after line 10, paragraph 2.

Adopted.

Belgium proposes two amendments. Belgian amendments not accepted; but a phraseology which will cover the case of a defendant who is in possession who does not give up although a unanimous vote of the Council is against him is referred to a Committee to be appointed. A time limit is to be inserted in paragraph 3 by the same Committee.

Thus the amendments voted were not of major importance; the real discussion was regarding the Belgian proposals quoted above,[1] and it will be convenient to extract here the debate as reported in the English minutes.

These proposals were discussed at length. Mr. Hymans' view was supported by the French delegates and by Mr. Vesnitch, but

[1] See p. 176.

> Lord Robert Cecil raised doubts as to the desirability of giving mandatory effect to the decisions of a majority of the Council, and President Wilson shared these doubts. Mr. Veniselos in agreement with Mr. Bourgeois urged that as regards the second amendment proposed by Mr. Hymans the Council should have some right to secure the satisfaction of the claims of the injured party to a dispute in cases where the Council had unanimously reported in favour of those claims. He also suggested that as regards the first amendment proposed by Mr. Hymans some mandatory effect might safely be given to the decisions of a large majority of the Council, for instance, a majority of four out of the five Great Powers and three out of four small Powers, assuming that representatives of four small Powers are included in the Council. Finally, Mr. Veniselos pointed out that some time limit should be put to the right of either party to a dispute to refer the disputes from the Council to the Body of Delegates, and this point was generally agreed to by the Commission.
>
> It was finally decided that a Sub-Committee consisting of Mr. Hymans, Mr. Bourgeois, Lord Robert Cecil, and Mr. Veniselos should undertake the drafting of amendments to the article in the sense of the Commission's discussion.

So while the Belgian proposals were not accepted, there was some sentiment in favor of giving to a unanimous report of the Council very nearly the effect of an arbitral decision. In view of other provisions of the Covenant (see Article 12, then Article 10), this would have been a long step toward obligatory arbitration, almost going the whole length in certain cases, if the Council were unanimous. The matter was to come up again.

Intimately connected with the preceding Article was the Sanctions Article, now 16, and in the Hurst-Miller Draft 14, the opening words of which were these:

> Should any of the H. C. P. be found by the League to have broken or disregarded its covenants under Article 10, it shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the League, which shall immediately subject it, etc.

As the minutes of the debate show, the broad principle of sanctions received unanimous assent, for there was no discussion at all of the fundamental question. In two regards the opening words of the Article above quoted were changed. One of these changes was purely verbal;[1] but the other amendment, proposed

[1] It substituted "hereby undertake immediately to" for "shall immediately."

by Cecil, to substitute "break or disregard" for "be found by the League to have broken or disregarded," was of real moment, although it passed without comment.

The question as to what State is the aggressor and how the question in a given case is to be answered was again left open. Logically, of course, there should be some method of decision, and I had so argued.[1] But probably it was wise to leave the matter vague and uncertain. Complete and final precision in any international document, particularly regarding such a momentous issue, is not always desirable. The experiment of the Covenant was more likely to work if much was left to the opinion of the future. Even in 1924 the complete logic and perfect circle of the Protocol of Geneva were in advance of that opinion.

The Belgian proposals [2] were further considered; here they raised the point as to what breaches of the Covenant sanctions should apply. There were some difficulties of language in the text as it then stood. Without going into these in detail, I refer to the wording finally reached, namely, that the sanctions are in terms applicable to a "resort to war" in breach of the Covenant and to such a breach only. But this change of words was to come later and, strictly speaking, did not alter the meaning of the Hurst-Miller Draft itself.

The decision at the time was merely to refer to the Sub-Committee the Belgian suggestion, so far as it related to a unanimous report of the Council under Article 13 (now 15). This action, however, did *not* carry Article 14 (the Sanctions Article, now 16) to the Sub-Committee, which did not report on it at all (see in the minutes the proceedings of the Seventh Meeting which include the report of that Committee; and also the remarks of Bourgeois, at the beginning of the elaborate note he read at the Eighth Meeting).

Indeed, this reference by the Commission to the Sub-Committee was little, if anything, more than a repetition of its previous reference under Article 13. The following extract from the English minutes of the Fifth Meeting shows this very clearly:

> Mr. Hymans raised the point whether Articles 7, 11 and 13 should not be added to Article 10 in the second line of this Article, in order that the sanctions provided in this Article might operate equally in respect of the situations contemplated in Articles 7, 10, 11 and 13.

[1] See Document 7, under Article 6, and also my comment in Document 22.
[2] See p. 176.

After discussion, it was generally agreed that a reference to Article 7 might be ambiguous, and that it was not really necessary to provide a sanction, especially by such summary procedure as that provided for in Article 14, to enforce the agreement embodied in Article 11. It was thought, however, that some sanction might perhaps be provided in the case of a unanimous report by the Executive Council under Article 13, and this question was likewise referred to the Sub-Committee above mentioned.

As to the Sanctions Article (now 16) my notes are again very summary, as follows:

ARTICLE XIV

British Amendment Instead of "shall immediately," "hereby undertake immediately," line 4.

Adopted. "break or disregard" Adopted.

Cecil: Treat that practically as a declaration of war.

Committee is to see what sanctions, if any, are desirable under Articles XI and XIII.

Only adopted as to XIII.

Article 15 (now 17) relating to non-members of the League, another most important Article, was then passed with very slight change and no discussion of principle but only of language; though now it is obvious that any provisions of the Covenant as to non-members, even if limited to the ultimate event of aggression, may raise questions of the utmost difficulty and delicacy; this was emphasized in the discussions about the Geneva Protocol and its possible application.

As the minutes show, to the opening phrase of the Article regarding an invitation to a non-Member of the League was added "upon such conditions as the Executive Council may deem just"; and Orlando pointed out that the expression "*ad hoc* Members" was not strictly accurate and the Sub-Committee was asked to suggest some other language. The discussion was very brief, just before the adjournment of the meeting at 11 P. M., and my notes as to the Article are so fragmentary that I reproduce them here only for the sake of completeness:

ARTICLE XV

British amendment accepted.

Non-member—accepts the rules of the League in regard to that conflict.

Cecil Bourgeois Venizelos Hymans

The second and third series of the amendments of the British were circulated at this Fifth Meeting of the Commission (see Document 22). The third series included proposals of two new Articles, one regarding amendments to the Covenant and the other regarding the revision of treaties, which did not come up for discussion until the Eighth Meeting of the Commission on February 11.

Another proposal of momentous possibilities also first came up at this time. This was the Japanese "equality" amendment. The text of the proposal, which was written both in English and in French, was as follows:

> The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League equal and just treatment in every respect, making no distinction, either in law or in fact, on account of their race or nationality.

> L'égalité des nations étant un des principes fondamentaux de la Société des Nations, les Hautes Parties Contractantes conviennent d'accorder, le plus tôt possible, à tous les étrangers nationaux des États membres de la Société, un traitement égal et juste sous tous les rapports, ne faisant aucune distinction, soit en droit soit en fait, à cause de leur race ou nationalité.

Conversations between House and the Japanese regarding their proposal were being held. Two days later, on February 9, my Diary records the following:

> Colonel House called me in and talked to me about the Japanese proposal. While I was discussing it Mr. Balfour came in. There was a general discussion of the matter between Colonel House and Mr. Balfour. Colonel House handed me a pencil memorandum which he showed to Mr. Balfour, commencing with the proposition taken from the Declaration of Independence, that all men are created equal. Mr. Balfour said that was an eighteenth century proposition which he did not believe was true. He believed that it was true in a certain sense that all men of a particular nation were created equal, but not that a man in Central Africa was created equal to a European. Colonel House said that he did not see how the policy toward the Japanese could be continued. The world said that they could not go to Africa; they could not go to any white country; they could not go to China, and they could not go to Siberia; and yet they were a growing nation,

having a country where all the land was tilled; but they had to go somewhere. Mr. Balfour said that he had a great deal of sympathy with this view.

Colonel House instructed me to draft an amendment and submit it to him, and I drafted this amendment and submitted it to him later with a letter returning to him the papers which he handed me, of which I did not take copies.

Accordingly I drafted this clause pursuant to the instructions of House:

> Recognizing that all men are created equal, the High Contracting Parties agree that the Executive Council may consider any external grievance affecting the nationals of any of the High Contracting Parties, and may make such recommendations in respect thereof as are deemed equitable.

However, I did not like the idea, and in sending it to House I wrote the following letter:

> The trouble with the Japanese proposition is this:
>
> You presented to them a draft which I think sounds as well as anything that can be written.
>
> This draft was not acceptable because it had, as you appreciated, no particular legal effect, because it was not intended to have any.
>
> Any draft which had a real effect would, of course, be impossible.
>
> I have tried my hand at another draft, which is enclosed. I do not like it, because while I do not think it binds any country to anything, it makes the general subject a matter of international cognizance, and I doubt very much if that result is or should be acceptable.
>
> The papers which you handed to me are returned herewith.

CHAPTER XVI

SIXTH MEETING OF THE COMMISSION

At the Sixth Meeting of the Commission, on February 8, four more Articles (16-19) were passed. This meeting was held at 10:30 in the morning; it was one of the occasions on which no attempt was made to lay before the members the text of their work up to date, as the meeting the night before had lasted till after 11 o'clock.

Article 16 of the Hurst-Miller Draft (now clause (d) of article 23 of the Covenant) entrusted to the League the general supervision of the Arms Traffic. The British proposal to add the words, "as hereinafter provided" was withdrawn; but its principle was subsequently accepted and now appears in the opening words of Article 23.

There was a prolonged discussion regarding Article 17, the Mandates Article (now 22). It will be remembered that Hurst and myself, for reasons which I have described,[1] had written the Article in the form of a short statement of general principles. General Smuts offered as a substitute for the Article in the Hurst-Miller Draft what was almost literally the most of the text of the resolution of the Council of Ten of January 30, of which Smuts himself was the original sponsor.[2] The form of that resolution was necessarily somewhat changed and certain of the opening phrases were omitted; but generally the language of the substitute offered is the language of the resolution.[3] The idea of writing into the Covenant the text of that resolution had also been the idea of Wilson (see Document 14, his Third Paris Draft, Supplementary Agreements I–III); but by the Smuts amendment two paragraphs were added to the original resolution at this time, including the highly important provision for a Mandatory Commission.

As the decision of January 30 had been taken by the five Great Powers, the Commission was bound to accept it, as Wilson

[1] See p. 70.
[2] See generally Chapter IX.
[3] See in Document 19 Annex 1 to the English minutes of the Sixth Meeting.

pointed out. However, the list of countries "formerly belonging to Turkey" spoken of in the Smuts amendment [1] as "which include Armenia, Kurdestan, Syria, Mesopotamia, Palestine and Arabia" was very sensibly omitted, following the remarks of Orlando. I may mention here that those remarks seem to be more fully set forth in the French minutes of the Sixth Meeting (see Document 20) than in the English. In view of subsequent developments, any mention of Armenia and Kurdestan as being under Mandates would have been highly embarrassing.

Wilson's suggestion of added language, to be applicable to former Russian territory, met with no support at all and was abandoned.

The accounts in the minutes of the discussion of the Mandates Article are not altogether complete. In some respects they are supplemented by my notes, which follow:

President Wilson suggests addition:

"The provisions of this article can also be applied in respect of other peoples and territories which are not otherwise disposed of in the Treaty of Peace of which this Covenant forms a part, or are not definitely constituted as autonomous states."

Smuts proposes British amendment.

Orlando objects to amendment as interfering with Conference and as going into details.

Amendment to President's amendment [2]

"whose interests and"

Words stricken from British amendment

"which . . . Arabia"

Submitted to sub-committee with instructions to incorporate idea.

Bourgeois amendment in the air.

Kiao Chow is not deemed as one of the German colonies.

Discussion then by Japanese as to insertion of word "if."

Wilson replied that he did not understand that the meaning was different from that with the word "if," for without "if" there would be annexation.

Japan: We understood that there were conditions of certain trade and prohibitions of fortifications and two or three other conditions enumerated, and also to give annual reports. I looked at it, to speak frankly, as this was the result it had come to. A trust under certain conditions.

[1] In the French text of the Smuts amendment in Annex 1 to the French minutes of the Sixth Meeting (see Document 20) the list of countries does not appear. Cf. the French in Document 22.

[2] This is quite obscure.

Wilson: If the Power to whom mandate is given embodies territory then there is no mandate.

Smuts: "If" is stricken out.

Thus the meeting agreed, as I wrote it down, that "Kiao Chow is not deemed as one of the German colonies." My recollection is that it was Mr. Koo who made the point. The minutes say nothing on the matter at all.

The amendment to the Mandates Article proposed by Bourgeois, to which allusion is made in my notes above quoted, escaped the attention of the Secretariat when the first drafts of the minutes were prepared, as it there appears in neither the English nor the French. Reference to it is found, however, in the final minutes; the text of it was this:[1]

In accordance with the decisions of the Conference of the Allies, the League of Nations considers itself as having assumed a moral protectorate over the populations referred to in the treaty of peace, which have not yet obtained a complete development.

The character of this protectorate must differ according to the degree of development of the people concerned, the geographical situation of their territory, their economic condition and other similar circumstances.

The rules and regulations of this protectorate are determined by international conventions. The Council of the League of Nations will cause new conventions to be called if it deems them necessary for assuring the welfare and the development of the populations concerned.

Conformément aux décisions de la Conférence des Alliés, la Société des Nations se considère comme investie de la tutelle morale des populations visées dans le traité de paix qui ne sont pas encore parvenues à un complet développement.

Le caractère de cette tutelle doit différer suivant le degré de développement des peuples, le situation géographique du territoire, ses conditions économiques et toutes autres circonstances analogues.

Les règles et les limites de cette tutelle sont déterminées par les conventions internationales. Le conseil de la Société des Nations provoquera au besoin de nouvelles conventions si elles lui paraissent nécessaires pour assurer le bien-être et le développement des populations dont il s'agit.

[1] I give the English version as the French proposed it. Cf. the English in Annex 2 to the minutes of the Sixth Meeting in Document 19.

Next to be mentioned is the following remark in the French minutes:

> M. Vesnitch (Serbie) propose un amendement tendant à faciliter l'émancipation définitive de ces peuples et leur admission dans la Société des Nations.
>
> Lord Robert Cecil (Empire britannique) prie M. Vesnitch de ne pas insister sur sa proposition pour des raisons d'opportunité.

In the English minutes it is given this way:

> Mr. Vesnitch proposed an amendment intended to facilitate the complete emancipation of these peoples and their admission into the League of Nations.
>
> Lord Robert Cecil asked Mr. Vesnitch not to insist on his proposal, for reasons of expediency.

The text of this Vesnitch amendment, however, is not given in the English minutes at all. In the French minutes (in Annex I) it appears thus:

> La Commission mandataire pourra aussi, quand elle jugera le moment venu, suggérer que l'indépendance d'un peuple, quel qu'il soit, puisse être proclamée et reconnue en vue de son admission éventuelle, comme membre de la Société des Nations.

Now I think that this episode *did not take place at the Sixth Meeting of the Commission at all.* In he first place, the earlier drafts of the minutes, English and French, say nothing about it and my notes say nothing about it. What seems to me conclusive, however, is that my records *do* show that at the Sixth Meeting on February 8, M. Vesnitch handed me the foregoing amendment with another amendment (to Article 11), both drafted in French, with the request that I write them in English and have them prepared to be laid on the table at the next meeting (of February 10). Accordingly, I did put them into English, the text of his amendment to Article 17 as I wrote it being as follows:

> The Mandatory Commission may also, when it shall deem the time proper, suggest that the independence of any such people may be proclaimed and recognized with a view to the eventual admission of such people as a member of the League.

Also, I wrote a memorandum on the two amendments, dated February 10, but written on the evening of February 9, which read (omitting the foregoing text of the proposal as to Article 17) as follows:

M. Vesnitch is to propose two amendments, the English of which I helped him to prepare, at his request.

The first amendment is to Article XI, and proposes to base arbitration on the First Convention of The Hague of 1907, relating to the Pacific Settlement of International Disputes.

In my opinion it would be unfortunate to base arbitration upon this Convention, particularly as it was accepted with reservation by various States, including the United States; while it has been useful in some cases, it belongs to a past era.

The second amendment proposed by M. Vesnitch is proposed as an addition to Article XVII, and presents a question of policy upon which I do not comment.

Copies of the two amendments are annexed, the changes proposed in Article XI being underscored [italics].

PROPOSAL OF M. VESNITCH

ARTICLE XI

The High Contracting Parties agree that whenever any dispute or difficulty shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will, *in accordance with the provisions of the Convention of The Hague for the Pacific Settlement of International Disputes,* submit the whole subject matter to arbitration, and will carry out in full good faith any award or decision that may be rendered.

PROPOSITION DE M. VESNITCH

ARTICLE XI

Les Hautes Parties Contractantes conviennent que, lorsqu'il s'élèvera entre elles un différend ou une difficulté, susceptible d'être soumis à l'arbitrage et ne pouvant être réglé par la diplomatie, *conformément à la Convention de la Haye relative à la solution pacifique des conflits internationaux,* elles soumettront la question pleine et entière à l'arbitrage et s'en tiendront de bonne foi au jugement rendu ou à la décision qui sera prise.

Furthermore, my notes of the meeting of February 10 (the Seventh Meeting) end up this way:

XVII of Vesnitch disapproved.
XI of Vesnitch referred to second reading.

So it seems to me clear that action on this amendment of Vesnitch to Article 17 took place at the Seventh Meeting on February 10 and not at the Sixth Meeting on February 8.

Finally there was one other incident relating to the Mandates Article at this Sixth Meeting; this was a rather embarrassing discussion about a single word in the text of the Smuts Amendment. The English minutes record it this way:

> After an exchange of views with Baron Makino, it was agreed to strike out the word "if" in the English text of the last paragraph of sub-article (b).

The third classification of territories under the resolution of the Council of Ten of January 30,[1] mentioning South-West Africa and certain islands in the South Pacific, as now phrased in the sixth paragraph of Article 22 of the Covenant, says that these territories "can be best administered under the laws of the Mandatory as integral portions of its territory" ("C" Mandates, as now termed). In the proposal of Smuts, as made to the meeting, this language read:[2] "as *if* integral portions thereof." Baron Makino, for the Japanese, brought up the point regarding the insertion of this word "if." My notes above quoted [3] show something about the discussion. The Japanese were clearly right. The basis of the Smuts amendment was, as Wilson had pointed out, that the matter had been agreed to not only in principle but also in detail by an elaborate resolution of the Council of Ten. Assuming that the insertion of the word "if" made a difference in the meaning, it was a change of the agreement and indefensible.

Furthermore, the insertion of one word in a long text of this sort looked like a change made with the thought that it would escape notice. There was no answer to the Japanese contention that the word should be stricken out.

With this omission and with the understanding that the list of countries should also be omitted, the Mandates Article was passed, the Smuts substitute being accepted as the new text, but referred to the Sub-Committee.

[1] For the text of this resolution see p. 109 *sq.*
[2] See Annex 1 to the English minutes of the Sixth Meeting in Document 19, and also Document 22.
[3] At p. 186 *sq.*

Article 18, the Labor Article of the Hurst-Miller Draft (now Article 23 (a) of the Covenant) was passed in a modified form. The basis of this was the British proposal (see Document 22), but there were some changes, including a specific reference to a Permanent Commission of Labor. As the minutes show, the discussion was brief, for the Article was not contentious. The new text read thus:

> The High Contracting Parties will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend; and to that end agree to establish as part of the organization of the League a permanent Commission of Labour.[1]

The "religious" Article, numbered 19 in the Hurst-Miller Draft, was much more troublesome. Cecil proposed a new text,[2] but no fewer than five members of the Commission expressed their doubts as to such an Article, recognizing much more clearly than did Wilson the enormous difficulties which it presented in any form.[3] The whole matter was accordingly referred to the Sub-Committee so that it might come up again. With this, the Sixth Meeting (February 8) adjourned.

[1] The minutes say "Labour Commission."

[2] See Document 22 for the English and French of this; also the Annexes to the minutes of the Sixth Meeting in Documents 19 and 20.

[3] The minutes here are rather mixed, the English and the French giving somewhat different versions of the remarks of Reis and Veniselos.

CHAPTER XVII

SEVENTH MEETING OF THE COMMISSION

FEBRUARY 8 was a Saturday and the Seventh Meeting of the Commission was fixed for Monday morning, February 10. The Sub-Committee was to meet on Sunday, at 2:30 P.M.

On Saturday afternoon Lord Eustace Percy and I drew up a new paragraph for Article 10, as the text was then numbered (now 12). The Commission at its Fourth Meeting on February 6 had directed the Secretariat to prepare such an amendment,[1] fixing some time limit for an arbitral award or a Council recommendation. Percy and I agreed on an English text only. As reported by the Secretariat it was in English and French as follows:

> In any case under this article, the award of the arbitrators shall be made within a reasonable time, and the recommendation of the Executive Council shall be made within six months after the submission of the dispute.
>
> Dans tous les cas prévus par cet article, le jugement des arbitres devra être rendu dans un délai raisonnable et la recommandation du Comité Exécutif devra être faite dans un délai de six mois après que le litige lui aura été soumis.

At this conference with Percy at my office we also discussed the proposed amendments to Article 13 (now 15) of the Covenant.[2] The debate on these had taken place at the Fifth Meeting of the Commission, on February 7, and the suggestions made had been referred to the Sub-Committee, which was to meet on February 9.

Hymans had proposed that a unanimous report of the Council regarding a matter in dispute between States should, in effect, be a binding decision of the dispute just as if it were an arbitral award. Veniselos' suggestion regarding this amendment of Hymans was (I quote from the English minutes of the Fifth Meeting):

[1] See p. 173.
[2] See p. 179 *sq.*

The Council should have some right to secure the satisfaction of the claims of the injured party to a dispute in cases where the Council had unanimously reported in favour of those claims.

This apparently was the sense of the Commission,[1] so in our talk Percy and I called it the "Veniselos amendment."

My discussion with Percy shows that both the British and ourselves at that time were not in favor of obligatory arbitration at all. What is said in my Diary about this talk is as follows:

> I then told Percy very frankly my views of the proposed amendment of Veniselos and expressed my reasons for believing that it should not be adopted, as follows: that the provision in Article XIII that a unanimous vote of the Executive Council should be a decision of the question, in so far as it would be a form of compulsory arbitration, would raise a new principle in the Covenant and great opposition in the United States and, I think, in Great Britain. Percy said that he was inclined to agree with my views, or at least had great sympathy with them, although he thought there was a good deal to be said on the other side. I admitted that there was much to be said on the other side so far as the working out in practice of such an amendment was concerned, but that I was thinking particularly of the danger of such an amendment jeopardizing the success of the plan. Percy said that he would discuss the matter with Lord Robert Cecil and that he might propose an amendment which would simply permit a State which had unanimous decision in its favor to go to war in support of it. I expressed an opinion, however, that it would be best to leave the whole amendment out.

The result was that the Sub-Committee reported a clause to the effect that if any Party to a dispute should refuse to comply with a unanimous report of the Council, then the Council should "consider what steps can best be taken to give effect to their recommendation."

However, while this provision is in the Covenant of February 14,[2] it was finally omitted (see the sixth paragraph of Article 15 of the Covenant).

The Sub-Committee met, I assume, on Sunday, February 9. As I mentioned above, it was composed of Bourgeois, Cecil, Hy-

[1] See also the discussion under Article 14 at the Fifth Meeting of the Commission.

[2] In somewhat stronger language. See Article 15 in the Annex to the English minutes of the Tenth Meeting, in Document 19.

mans and Veniselos. I was not present at the meeting, so I can give no account of it except the result, which was a report in English and in French, which was limited to the text of the proposed amendments.[1]

This report was presented at the Seventh Meeting of the Commission on the morning of February 10; but as my notes say [2] and for some reason that I do not now recall, the "Report of Drafting [3] Committee" at the opening of the meeting was "not quite ready."

The language reported by the Sub-Committee for the English text [4] of the various Articles considered by it will now be noticed, their first proposal being this:

> For the third sentence of the second paragraph of Article 13 (now the sixth paragraph of Article 15), added language italicized:
> "If the report is unanimously agreed to by the members of the Council other than the parties to the dispute, the High Contracting Parties agree that none of them will go to war with any party which complies with its recommendations, *and that, if any party shall refuse so to comply, the Council shall consider what steps can best be taken to give effect to their recommendation.*"

As a consequence of this added language the Sub-Committee recommended the following addition to Article 11 (now 13):

> If not, the Executive Council shall consider what steps can best be taken to give effect to the award or the decision.

It may be noted here as a rather curious final result that the first of the above two recommendations of the Sub-Committee was ultimately omitted from the Covenant text; the second, however, which was thought in a sense to follow from the first, remains and is now in substance the last sentence of Article 13. This may be said to bring out all the more strongly the fact that

[1] For the Report in each language, see the respective minutes of the Seventh Meeting, Annex 1.

[2] This is confirmed by the minutes, as the Report of the Committee came up toward the close of the meeting.

[3] The Sub-Committee named at the Fifth Meeting of the Commission came to be called a Drafting Committee at the Sixth Meeting. But I shall continue to call it the Sub-Committee, to avoid confusion with the Drafting Committee appointed at the Eighth Meeting.

[4] I think that anyone who compares the French with the English of the various amendments in the English and French minutes will agree that they were in general first written in English and then translated.

a unanimous recommendation of the Council under Article 15 is not a binding and conclusive settlement.

Other proposals of the Sub-Committee follow:

For the second sentence of the third paragraph of Article 13 (now the second sentence of the ninth paragraph of Article 15), added language italicized:

"The dispute shall be so referred at the request of either party to the dispute, *provided that such request must be made within fourteen days after the submission of the dispute.*"

For the latter part of the first sentence of Article 15 (now Article 17):

". . . The High Contracting Parties agree that the State or States not members of the League shall be invited to accept the obligations of membership in the League, for the purpose of such dispute, upon such conditions as the Executive Council may deem just."

For the first words of the Mandates Article (then 17, now 22):

"To those colonies and territories which in consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples. . . . ."

There was no difference of view and no discussion regarding the report of the Sub-Committee concerning the Articles above mentioned.[1] Similarly the above quoted report[2] of the Secretariat as to Article 10 (now 12) was adopted *nem. con.*

However, one portion of the report of the Sub-Committee provoked considerable debate. This was the new draft of Article 19, the "religious" Article. As reported by the Sub-Committee, it read thus:

Recognizing religious persecution as a fertile source of war the High Contracting Parties solemnly undertake to extirpate such evils from their territories, and they authorize the Executive Council, wherever it is of opinion that the peace of the world is threatened by the existence in any State of evils of this nature, to

[1] A curious slip in the French minutes of the Seventh Meeting should be noted here. Annex 11 sets forth the text of various Articles adopted at this meeting. Among these is Article 17; but its text as given is entirely erroneous. Its opening words, pursuant to the report of the Sub-Committee, are given correctly; but they are followed by the French of the Hurst-Miller Draft instead of by the French of the Smuts substitute as adopted at the Sixth Meeting on February 8.

[2] See p. 192.

make such representations or take such other steps as it may consider that the case requires.

This draft was largely copied from the British proposal (which will be found in Document 22), although it is even more drastic; during the discussion of its language I wrote a note to the President regarding the words "or take such other steps", saying that they "go very far and, I think, farther than any other provision in the Covenant." The text of this draft was not liked by the Commission at all, despite its source.

Finally, Wilson proposed a substitute text which was adopted in the following form:

> The High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and they resolve that they will not permit the practice of any particular creed, religion, or belief, whose practices are [1] not inconsistent with public order or with public morals, to interfere with the life, liberty or pursuit of happiness of their people.

It is impossible to suppose that Wilson wrote this, for he was a master of English. Now the latter part of this substitute text as above written, if it means anything at all, which is more than doubtful, is contrary to what was presumably the intention of its author. What that intention was is doubtless expressed by the text which the French wrote:

> Les Hautes Parties Contractantes décident qu'elles ne permettront pas que leurs citoyens, adhérents d'une foi, religion ou croyance quelconque, qui ne porte pas atteinte à l'ordre ou aux moeurs publiques, soient pour cette raison inquiétés dans leur vie, leur liberté et leur poursuite du bonheur.

However, the English text had a sufficiently satisfactory sound to end the discussion and as it was subsequently made intelligible and then finally omitted altogether, no harm was done.

During the earlier stages of this Seventh Meeting of February 10 the last three Articles of the Hurst-Miller Draft had been passed on after prolonged debate. Article 20 (now 23 (e)) was merely a general statement of the principle of economic equality:

> The High Contracting Parties will agree upon provisions intended to secure and maintain freedom of transit and just treatment for the commerce of all States members of the League.

[1] My notes read "practice is."

During the debate there were various observations of interest. According to my notes, Wilson made the following explanation of the principle of the Article:

> Not any restriction on any State in regard to its fiscal policy, no thought of curtailment of right of customs duty, port charges, etc.—in mind that old arrangements of retaliatory tariffs and discriminatory tariffs should be done away with.

He also remarked, remembering the resolution of the Plenary Session of the Conference of January 25, that "the Covenant would form an integral part of the Treaty of Peace"; and, concerning the reconstruction period, emphasized by Belgium and France, he stated that "Germany will not be a member of the League during this period." The result was that a formula suggested by Wilson was added which met the French and Belgian views regarding reconstruction. Furthermore, although the minutes do not so state directly, the word "just" was changed to "equitable" and finally a change was made in the opening words, of which I can find no record at all except the subsequent print of the text, the Article then reading as follows:

> The High Contracting Parties agree that provision shall be made through the instrumentality of the League to secure and maintain freedom of transit and equitable treatment for the commerce of all States, members of the League, having in mind, among other things, special arrangements with regard to the necessities of the regions devasted during the war of 1914-1918.

It was, however, when what I may call the two "Treaty" Articles were reached (then 21 and 22, now 18 and 20), that really fundamental issues of international relations of the future came into question.

Article 21, for the Registration of Treaties, read thus in the Hurst-Miller Draft:

> The High Contracting Parties agree that any treaty or international engagement entered into between States Members of the League shall be forthwith registered with the Chancellor, and as soon as possible published by him.

The word "any" was changed to "every" and it was understood that only subsequent treaties were intended, an understanding now expressed in the Covenant by the word "hereafter." A

Wilson amendment added the words "and that no treaty or international engagement shall be operative until so registered." While the precise juridical effect of this expression in the form in which it now exists in the Covenant presents various interesting legal difficulties, there can be no doubt that the added words put some extra teeth into the Article.

One other seemingly verbal change should be mentioned. For the words "entered into between States Members of the League," M. Vesnitch's amendment substituted "entered into by any State, a member of the League." [1] The resulting difference is that now a treaty between France and Russia is registered at Geneva, although Russia is not in the League. Under the original language, registration of such a treaty would not have been obligatory.

So the new text read thus:

> The High Contracting Parties agree that every Treaty or international engagement entered into by any State, a member of the League, shall be forthwith registered with the Chancellor and as soon as possible published by him, and that no Treaty or international engagement shall be operative until so registered.

Then followed in the Hurst-Miller Draft Article 22 (now 20) against Treaties inconsistent with the Covenant:

> The High Contracting Parties severally agree that the present Covenant is accepted as abrogating all obligations *inter se* which are inconsistent with the terms hereof, and solemnly engage that they will not hereafter enter into any engagements inconsistent with the terms hereof.
>
> In case any of the Powers signatory hereto or subsequently admitted to the League shall, before becoming a party to this Covenant, have undertaken any obligations which are inconsistent with the terms of this Covenant, it shall be the duty of such Power to take immediate steps to procure its release from such obligations.

These are very natural provisions to which no one could in terms object;[2] none the less they are very far reaching and important. A treaty of the political consequences of the Anglo-Japanese alliance was subsequently recognized as being in part

[1] In the English minutes of the Seventh Meeting, the words are "by a State Member" but in Annex 3, the Article appears as in the text. Cf. the French minutes, which mention the amendment, but take no note of it in the Annex.

[2] See p. 8 *sq.* for almost the same language in the Phillimore Plan.

within the scope of the language of abrogation. The debate in the minutes is worth the reading.

Who was to pass on the question of a possible inconsistency between the Covenant and some other treaty? Larnaude inquired whether it would be some Tribunal or the Council. Wilson suggested "the decision of the court of public opinion."

Suppose the Secretary General might think that a treaty offered for registration was contrary to the Covenant? In such case both Veniselos and Cecil thought he should lay it before the Council for a decision. The idea of a ruling by the Council seemed most acceptable. The Permanent Court of International Justice was as yet only a hope.

In the minds of all the statesmen was naturally the question of treaties of alliance. Did the Covenant permit them or not? Orlando pointed out the great significance of the "limitation upon the freedom of Governments to enter into engagements." All alliances are called "defensive," he said. Hymans recurred to the admitted possibility of war under the language of what is now Article 15. If there might legally be war, he logically, if boldly, held that in such case there might be even an "offensive" alliance.

No one was objecting to a clause against treaties inconsistent with the Covenant. It was agreed to without dissent or even proposal of amendment. But everyone wondered just how far the new limitation would extend in practice.

So while the discussion altered nothing in the text of the Article against inconsistent treaties, it showed a recognition of the fact that the Covenant meant a change from the previously accepted system. States were no longer to be free to make treaties as they saw fit. They must at least conform to the new Covenant. Maybe some alliances could be entered into. Perhaps the Council could pass on such matters. Instinctively it was realized that realities were to be thought of, not merely forms of words. An alliance between Norway and Sweden is different in nature, not merely in degree, from an alliance between Germany and Russia. It was enough perhaps that the principle had been settled, the details of the problem remaining for later solution, to be attempted in the Treaty of Mutual Assistance and more ambitiously in the Protocol of Geneva, and achieved, in part at least, at Locarno.

Indeed the discussion seemed to Orlando so important that he asked for its inclusion in the minutes, for the reason, as the

French minutes put it, "car elle donne une interprétation restrictive à l'article XXI, dont il y a lieu de tenir compte." My notes put his request thus:

> Orlando thinks the procès-verbal should contain the discussion as showing that the sanction of this important Article is public opinion.

Finally, when the discussion touched on the *status quo ante* Mr. Wilson put the wisdom of real statesmanship in a few words: "It does not rest with us to send a search warrant into the politics of the past. . . . . Our task is primarily to build for the future."

The Commission had now gone through the Hurst-Miller Draft; but there were various proposals of amendments and additions pending. It was agreed that they should go over to the next meeting and I shall refer to them in detail later. [1]

There was, however, one amendment which was disapproved at this meeting, although it is not mentioned in the minutes at all, but only in my notes. This was the proposal of Vesnitch regarding the Mandates Article which I have already discussed.[2]

[1] Some of them, but not all, are referred to in the closing paragraph of the minutes of this Seventh Meeting of February 10.

[2] See p. 188 *sqq.*

CHAPTER XVIII

EIGHTH MEETING OF THE COMMISSION

One more meeting of the Commission was to be held before the Covenant was gone over in its entirety by a Drafting Committee. This Eighth Meeting was on the morning of February 11. The situation then was that the twenty-two Articles of the Hurst-Miller Draft of the Covenant had, with some changes, been passed on a first reading, but with various proposals pending.

In preparation for the session, I had made for the President a list of the pending amendments, with their English text. The list did not, however, include the text of the Japanese equality proposal, which I mentioned above,[1] as that amendment had not been formally presented. I reprint here merely the enumeration, as the text of each of the proposals appears elsewhere:

Article VI, by M. Bourgeois.

Article VIII, by M. Bourgeois.

Article XI, by M. Vesnitch. (It was suggested that this amendment go over to the second reading.) [2]

Article XIV, by M. Bourgeois.

Article XVII, by M. Bourgeois. (This amendment seems to be still pending as the French requested that it be distributed.)[3]

Article XXIII, additional Article proposed by Lord Robert Cecil.

Article XXIV, additional Article proposed by Lord Robert Cecil.

Except as above noted, the text of each of these proposals is quoted in the following discussion.

What the Eighth Meeting of the Commission did was to adopt two new Articles and then refer the entire Covenant to a Drafting Committee to which the various pending amendments

[1] See p. 183.

[2] Quoted p. 189. This amendment was not brought up again or acted on.

[3] Quoted, p. 187. This amendment was mentioned at the Tenth Meeting. See the minutes and p. 264 *sq.* (Article 19).

and any others offered were to be submitted. Curiously enough, neither the fact of this reference nor the names of the members of the Committee appear in the English or French minutes, although an early draft of the English minutes, which I quote below,[1] makes a definite statement of the matter.

The Eighth Meeting first took up the proposal of Cecil to add a new Article 23 (originally proposed as 24, see Document 22) for the revision of obsolete treaties. This proposal, which was destined in its changed form to become Article 19 of the Covenant as now written, grew out of (the present) Article 10 and its guarantee of territorial integrity. In one of our earliest talks Cecil had suggested the idea in place of the provisions of the British Draft (Document 10) and of Wilson's First and Second Paris Drafts (Article 3) for changes in frontiers and I had then said I thought it would be acceptable.[2]

But while the principle was acceptable, the language proposed by the British [3] was unsatisfactory:

> The Body of Delegates shall make provision for the periodic revision of treaties which have become obsolete and of International conditions, the continuance of which may endanger the Peace of the world.

In my memorandum to Colonel House of February 9 I had written about the proposal as follows:

> If this Article means that the Body of Delegates have any power beyond that of recommendation, it is bad. If it means that they have only powers of recommendation, it should say so. I suggest the following substitute:
>
> > "The Body of Delegates shall make recommendations as to the periodic revision of treaties which have become obsolete and of international conditions, the continuance of which may endanger the Peace of the World."

The question was whether the Assembly was to have more than the right of recommendation as to the revision of treaties. I thought it should be made clear that it had no power of revision. My view was similar to that expressed by Kramář, that if the Assembly "were to become the judge of all treaties it would have powers like those of an international parliament"; and dur-

[1] See p. 210.
[2] See p. 52 *sq.*
[3] See Document 22. The English minutes leave out the words "the Peace of."

ing the meeting I wrote to Wilson that if the draft gave more power than recommendation it was bad; or, in other words, unconstitutional.

Cecil's remark during the debate that the Assembly could not act under the proposal except by unanimous vote does not answer the constitutional point, for by the fundamental laws of many countries the revision of a treaty requires legislative assent. Under the existing wording, indeed, the very interesting question has been suggested as to whether or not unanimity is required; it is argued that to "advise reconsideration" binds no one and so that such action is not to be regarded as a "decision" under Article 5 of the Covenant.

The debate was not prolonged. Toward its close Reis asked whether the Council [1] could refuse to register a treaty; then the English minutes add: "This question was answered in the negative." This remark does not appear in the French minutes and is a late addition to the English, for it is not in the English print circulated about March 22. The generality attributed to the answer would indicate that it was intended to express the sense of the meeting; and while according to my view the negative answer is the correct one, I question whether it was given at that time.

Then Wilson proposed the new text, which was adopted as Article 23 (now 19):

> It shall be the right of the Body of Delegates from time to time to advise the reconsideration by the States, members of the League, of treaties which have become inapplicable, and of international conditions, the continuance of which may endanger the peace of the world.

Next came the Article for amendments to the Covenant, proposed by the British as 24 (originally proposed as 23 and now 26):

> Amendments to the constitution and functions of the League can be made by a unanimous vote of the Executive Council confirmed by a majority of the Body of Delegates.

The form of the Article as proposed was repugnant to the Constitutions of various countries, including the United States,

[1] According to the English minutes, the question included the Assembly also.

as I thus had specifically mentioned in my comment on it of February 9:

> In my opinion this amendment would be invalid under the United States Constitution.
>
> The Covenant is a treaty; or strictly speaking, a part of a treaty, and any amendment thereof is technically, and might indeed be substantially, a new engagement.
>
> So far as the United States is concerned, the amendment would, I think, be valid if it read:
>
> > "Amendments to the constitution and functions of the League will be binding when ratified by the States whose representatives compose the Executive Council, and by a majority of the States whose representatives compose the Body of Delegates."
>
> I see no reason, however, for the insertion of the words: "and functions," and I think these words should be stricken out.

The language of the British proposal did not take note of the great difference that there is, legally speaking, between the voting of an amendment by the Council of the League, or by the Assembly (each of these bodies being a conference of representatives of Governments) and the ratification of such an amendment according to the fundamental laws of the country represented.

During the discussion I wrote to Mr. Wilson:

> This is invalid in its present form. I think it would be good so far as the United States is concerned if it read:
>
> > "Amendments to the constitution of the League will be effective when ratified by the States whose representatives compose the Executive Council together with a majority of the States whose representatives compose the Body of Delegates."

In substantially this form, with a simple majority in the Assembly changed to a three-fourths majority, in accordance with the sense of the meeting, Wilson proposed the new text which was adopted:

> Amendments to this Covenant will be effective[1] when ratified by the States whose representatives compose the Executive Council together with a three-fourths majority of the States whose representatives compose the Body of Delegates.

[1] The English minutes of the Eighth Meeting have "take effect" for "be effective." This is an error, for I still have the paper which I wrote and which Wilson changed and read.

It may be said here of this new text that there could be no question of its validity as to any country represented on the Council. It was not even yet sufficient for a country represented only in the Assembly and not willing to ratify a proposed amendment. To preserve the rights of such a country a provision permitting withdrawal upon dissent from a change was required (see Article 26 of the Covenant). The minutes, as well as the following extract from my notes, show that the point was mentioned at this meeting, though not then settled:

> The next draft provides "this Covenant" instead of "Constitution of the League."
>
> Insert "two-thirds" before "majority." Veniselos objected that a State could not be bound in an essential matter by any majority. I suggested a clause which might meet this about as follows:
>
> > "But no such amendment shall be effective, if any State not assenting thereto shall declare that it affects an essential matter."
> >
> > Cecil suggested withdrawal.
> >
> > Veniselos suggested three-fourths after.
> >
> > Vesnitch approved two-thirds.
> >
> > Three-fourths adopted.

Besides the minutes, I have a draft minute of this meeting typed in English. I do not know who wrote it. As it throws some further light on the debate, I extract here its contents so far as they relate to the discussion up to this point:

> ARTICLE XXIII.
>
> Lord Robert Cecil explained the purpose of this Article.
>
> After discussion concerning the purport of the Article, President Wilson suggested that it should be changed to read:
>
> > "It shall be the right of the Body of Delegates from time to time to advise the reconsideration by the States, members of the League, of treaties which have become inapplicable, and of international conditions, the continuance of which may endanger the peace of the world."
> >
> > Article XXIII was adopted in this modified form.

ARTICLE XXIV.

Lord Robert Cecil explained that the object of this proposal was to provide means for amending the Covenant as it might from time to time appear advisable.

In view of the fact that the Article in this form was repugnant to the Constitution of the United States, President Wilson suggested that it be modified to read:

> "Amendments to the Constitution of the League will be effective ratified by the States whose representatives compose the Executive Council together with a majority of the States whose representatives compose the Body of Delegates."

An observation by Mr. Venizelos gave rise to a discussion concerning the relative value of flexible and rigid constitutions and of the consequences which too rigid a constitution might provoke. M. Venizelos referred to the Constitution of Greece whereby it was provided that amendments dealing with "non-fundamental" matters might be more easily adopted than amendments which touched upon "fundamentals."

Baron Makino pointed to the impracticability of drawing any valid distinction between these two, and in this observation he was supported by the opinion of the Commission. The discussion led to the adoption of the Article in the following modified form:

> "Amendments to this Covenant will be effective when ratified by the States whose representatives compose the Executive Council together with a three-fourths majority of the States whose representatives compose the Body of Delegates."

There were pending amendments of the French to Articles 6, 8 and 14, and these were pressed at this Eighth Meeting of the Commission. Their text follows:[1]

ARTICLE VI.

The second paragraph to be modified so as to read as follows:

Furthermore no nation can be admitted into the League if it is not provided with representative institutions which permit it to be considered as itself responsible for the acts of its own Government; if it is not in a position to give effective guaranties of its faithful intention of observing its obligations; if it does not conform to the principles which the League may establish concerning its naval and military forces as well as its armaments.

[1] The amendments were written in French and the translations here (which were current at the time) differ somewhat from those in the English minutes.

Modifier ainsi le deuxième paragraphe:

Aucune nation d'aillieurs ne pourra être admise dans la Société si elle n'est pas pourvue d'institutions représentatives qui permettent de la considérer comme responsable elle-même des actes de son propre gouvernement; si elle n'est pas en état de donner des garanties effectives de son intention loyale d'observer les conventions; si elle ne se conforme pas aux principes que la Société pourra établir en ce qui concerne ses forces navales et militaires ainsi que ses armements.

ARTICLE VIII.

After the phrase: "The Executive Council shall formulate plans for effecting such reduction," insert the following paragraphs:

It shall institute an international control of military forces and armaments of the High Contracting Parties, which agree to submit thereto in all good faith.

It shall determine the conditions which are necessary for assuring the permanent existence and the organization of an international force.

Après la phrase: "Le Comité exécutif élaborera les plans appropriés permettant cette réduction," les paragraphes suivants:

Il instituera un contrôle international des effectifs et des armements et les Hautes Parties Contractantes s'engagent à s'y soumettre en toute bonne foi.

Il déterminera les conditions dans lesquelles doivent être assurée d'une façon permanente l'existence et l'organisation de la force internationale.

ARTICLE XIV.

After the words of the second paragraph: "to be used to protect the covenants of the League," insert the two following paragraphs:

In the case that one of the parties to the dispute, after having followed the procedure imposed by Article x, should not accept the sentence of the arbitration, or a unanimous decision of the Executive Council, or of the Body of Delegates, the Council will propose to the associated Governments the application of appropriate penalties selected from those propounded in the first paragraph of this article.

In the case of a recommendation made by the majority only, concerning a dispute which could involve a recourse to arms by the interested parties, the executive Council will refer the question to the Governments themselves.

Après ces mots du deuxième paragraphe: "Destinée à protéger les engagements de la société" les deux paragraphes suivants:

> Dans le cas ou l'une des parties en litige après avoir suivi la prócedure imposée par l'article 10 n'accepterait pas une sentence d'arbitrage ou une décision prise à l'unanimité par le Comité exécutif ou par l'Assemblée des Délégués le Conseil proposera aux gouvernements associés l'application des sanctions appropriées parmi celles prévues au premier paragraphe du présent article.
>
> Dans le cas d'une recommandation faite seulement à la majorité pour un différend pouvant amener entre les parties intéressées un recours à la force, le Conseil exécutif soumet la question aux gouvernements eux-mêmes.

In presenting these amendments Bourgeois read a very elaborate note which will be found in the minutes, and which argued in some detail in favor of each of them.

So far as the French amendment to Article 6 was concerned, relating as it did to the qualifications of future Members of the League, there appears to have been no other discussion of it and its principle seems to have been tacitly accepted; the Drafting Committee which reported to the next meeting incorporated the principle in Article 7 of their text, and it is now to be found in the second paragraph of Article 1.

Similarly there is no further reference in the official minutes to the French amendment to Article 14 (now 16), which looked toward the possibility of the application of sanctions to the enforcement of an arbitral award or a unanimous recommendation of the Council, and perhaps even to a majority recommendation. This proposal was very similar to the Belgian proposals mentioned above.[1] Despite the silence of the minutes, there is no doubt that this amendment was sent to the Drafting Committees, as my notes say:

> Bourgeois amendment to XIV referred to Committee of Four to coordinate amendments to XI *and* XIII.

The foregoing is supported by the draft minute above mentioned, which gives the following account of the proposal:

> M. Léon Bourgeois proposed an amendment to Article XIV. He explained that the purpose of this amendment was to give full effect to the relations existing between this Article and Articles XI and XIII.

[1] p. 176.

President Wilson and Lord Robert Cecil were of the opinion that the substance of the present amendment was already contained in these Articles; but agreed with the proposal of M. Venizelos that the question should be referred back to the drafting committee in order that the text of these Articles might be harmonized.

Of course the most important French proposal was that for international supervision of armaments and an international force, the amendment to Article 8, which was insisted on throughout the discussions up to this point and thereafter and which was never acceptable either to the British or to Wilson.

The debate was prolonged and is given at considerable length in the minutes. Cecil was as unwilling as Wilson to yield to the proposal urged by the French; but he accepted in principle the *other* amendment proposed by Bourgeois to Article 8 which was contained in the note which he read. This was to add, after the provision that the Council should formulate plans for the reduction of armaments, the words:

En tenant compte dans la fixation des contingents, non seulement de la puissance relative des États, mais des risques que peuvent leur faire courir leur situation géographique et l'état de leur frontières.

The action taken on this proposal is more accurately set forth in my notes than in the minutes:

I wrote (as to the French amendment for an international force):

It is not a question of joint military operations, but of an international control of our Army and Navy *in war and in peace*—these are under the President. I don't think it is good.

The President said it was unconstitutional and also impossible. He said it was a question which required a decision.

Cecil supported the President and suggested "having special regard to the situation and circumstances of each State" after "international obligations."

Foregoing suggestion adopted but subject to question of redaction between Bourgeois and Cecil.

Cecil suggests as addition to Article VIII:

"A Permanent Commission shall be constituted to advise the League in military and naval matters."

Not adopted.

Further light on the proceedings is to be found in the above mentioned draft minute, the remainder of which reads thus:

M. Léon Bourgeois proposed an amendment to Article VIII. He dwelt upon the importance of establishing each State member of the League in a position of "national security." He regarded it as most important that there should be expressed in the Covenant some definite provision by which the force of the League would be immediately available for the support of any State which might be attacked.

M. Larnaude was strongly of the opinion that protection should be given against secret manufacture of munitions and secret preparations for war.

President Wilson agreed with M. Léon Bourgeois that every possible provision should be made for the national security of the members of the League, but made the point, however, that, so far as the United States was concerned, the Constitution of the United States stood in the way of his agreeing to an amendment which contemplated the creation of an international force and its disposition under an international command.

In reply to M. Larnaude, President Wilson made the point that in fact it was impossible for nations to engage in serious military preparations and keep them secret.

Lord Robert Cecil proposed that after the words "national safety" the following words should be inserted in Article VIII; "having special regard to the situation and circumstances of each State." To meet the other considerations raised by M. Léon Bourgeois, Lord Robert Cecil proposed to add at the end of Article VIII, these words: "A permanent commission shall be constituted to advise the League of Nations on military and naval questions." Neither of these proposals was formally adopted.

At the end of the meeting it was agreed that inasmuch as the entire Covenant had now been examined by the Commission, it should be placed in the hands of a drafting committee, consisting of M. Larnaude, Lord Robert Cecil, M. Venizelos and M. Vesnitch, in order that it might be given definitive form.

M. Léon Bourgeois and Lord Robert Cecil agreed to submit their amendments to the newly appointed committee for their consideration.

Baron Makino reserved the right to present certain additions to the Covenant at the time of the second reading.

The meeting was adjourned at 1:40 p. m. to meet again at the Hotel de Crillon on Thursday morning at 10:30.

Interesting as the discussion was, it got nowhere on the major issue raised which was again to be considered by the Drafting

Committee; and while the official minutes do not say so, the above quoted draft minute shows that Baron Makino reserved the right "to present certain additions to the Covenant" subsequently or, in other words, to bring up the Japanese equality amendment.[1]

[1] See p. 183.

CHAPTER XIX

THE FEBRUARY DRAFTING COMMITTEE

THE Drafting Committee was composed of Cecil, Larnaude, Veniselos and Vesnitch. What the Committee had before it was the text of twenty-four Articles, which the Commission had passed on its first reading, with the pending French amendments [1] of the Eighth Meeting of February 11; and it was also to consider any other amendments that might be suggested.

It is unnecessary to print separately this English text of the Covenant, thus referred to the Drafting Committee, as it all appears at various points in the English minutes.[2] This text, however, could not be regarded as representing fully the action of the Commission in every detail. Thus, it had been understood in the Commission that Article 21 concerning the registration of treaties was to be applicable only to new treaties; there were words to be added in Article 8, for disarmament, which had been agreed to in principle; and the recommendation of a previous Sub-Committee for an added sentence to Article 11 (now 13) had been accepted. Such matters were for the Drafting Committee to take into account; and the necessary changes were incorporated in the new text.

In any proper sense of the words, there was perhaps no French text at this time; but the translation [3] of the Hurst-Miller Draft, which is Annex I to the French minutes of the First Meeting, had been used as the basis of a French translation of the text as the Commission went along with is work from

[1] See p. 206 *sqq.*

[2] The English text as it existed at the close of the Eighth Meeting on February 11 is found in the English minutes of the meetings as follows (Document 19):
Second Meeting: Preamble and Articles 1 and 2 (Annex).
Third Meeting: Articles 3 to 6 inclusive (Annex).
Fourth Meeting: Articles 7 to 12 inclusive (Annex) but a paragraph was added to Article 10 later.
Fifth Meeting: Article 14 (Annex).
Sixth Meeting: Articles 16 and 18 (Annexes 6 and 7).
Seventh Meeting: Articles 13, 15, 17, and 19 to 22 inclusive (Annex 3) added paragraph to Article 10 (Annex 2).
Eighth Meeting: Articles 23 and 24 (Text).
There are some trifling errors, which are noted in Document 19.

[3] As to this translation see p. 131.

meeting to meeting. But the French minutes do not, as do the English minutes, contain in any form the text of *all* of the Articles as passed on and in various instances the text of the Articles which are printed is erroneous.[1] Indeed, when one considers how mixed the French minutes are in this regard, it is easy to appreciate the situation as to a French text during this period.

The result of the work of the Drafting Committee was a new text in twenty-seven Articles, the English of which is Annex 2 to the English minutes of the Ninth Meeting. This of course should be compared with the text which went to the Drafting Committee subject to the above remarks thereon. A summary view of the changes made was sent by me to Wilson on February 13. I reproduce it here:

This memorandum relates to the draft of "Covenant" delivered 13 February, 1919.[2] *The comparison is with the draft in twenty-four articles as adopted by the Commission on the League of Nations up to the close of its session of 11 February, 1919.*

PREAMBLE

There is a change in verbiage in the opening words which use "war" instead of "the use of armed force."

ARTICLE I

There is very slight change in verbiage.

ARTICLE II

The change made eliminated the mention of ambassadors or ministers.

[1] The omitted Articles are 11, 12 and 14. I have inserted them as notes in the French minutes (Document 20) and have also tried to indicate all the errors and other variations. Subject to this, the French text (such as it was) which existed at the close of the Eighth Meeting on February 11 is in the French minutes as follows:

Second Meeting: Preamble and Articles 1 and 2 (Annex).
Third Meeting: Articles 3 to 6 inclusive (Annex).
Fourth Meeting: Articles 7 to 9 inclusive (Annex) and 11 and 12 (Note).
Fifth Meeting: Article 14 (Note).
Sixth Meeting: Articles 16 and 18 (Annex II).
Seventh Meeting: Articles 10, 13, 15, 17, 19, 20, 21 and 22 (Annex II).
Eighth Meeting: Articles 23 and 24 (Annex).

[2] i.e. from the Drafting Committee, Annex 2 to the English minutes of the Ninth Meeting.

ARTICLE III

This consists of the first three paragraphs of former Article III, without substantial change.

ARTICLE IV

This consists of the remaining paragraphs of former Article III, without change.

ARTICLE V

This is former Article IV with some change in language, the words: "Secretary General" being adopted instead of: "Chancellor," in this Article and throughout the draft.

ARTICLE VI

This is former Article V without change.

ARTICLE VII

This is former Article VI and is somewhat changed. A comparison of the texts is necessary.

ARTICLE VIII

This is former Article VIII with some changes and additions. A comparison of the texts is necessary. The words in parenthesis are an amendment proposed by the Delegate from Portugal, which was left without decision by the Committee of Four.

ARTICLE IX

This Article is new.

ARTICLE X

This is former Article VII, the second sentence being changed principally by the insertion of the words: "or in case of any threat or danger of such aggression."

ARTICLE XI

This is former Article IX somewhat changed in the second paragraph.

ARTICLE XII

This is former Article X. The word "war" is substituted for: "armed force."

ARTICLE XIII

This is former Article XI. The arrangement and the language have been changed but, I believe, without change in meaning.

ARTICLE XIV

This is former Article XII, without change.

ARTICLE XV

This is former Article XIII, with a few changes of language.

ARTICLE XVI

This is former Article XIV without change except as required by the renumbering of the Articles.

ARTICLE XVII

This is former Article XV without change except as required by the renumbering of the Articles.

ARTICLE XVIII

This is former Article XVI with a change in the opening language.

ARTICLE XIX

This is former Article XVII with the following changes:

1. The words: "as a" are substituted for the word: "in" in the opening phrase.
2. The word: "yet" is inserted in the third line. This word appears in the official text of the Resolution of the five Powers relating to mandataries.
3. In the sixth paragraph the expression: "the South Pacific Islands" is used instead of: "the Islands in the South Pacific" in accordance with the text of the above Resolution.
4. Typographical errors in the next to the last paragraph have been corrected.

ARTICLE XX

This is former Article XVIII with the word: "Bureau" substituted for: "Commission."

ARTICLE XXI

This is former Article XIX, rewritten. A comparison of the texts is necessary.

ARTICLE XXII

This is former Article XX unchanged.

ARTICLE XXIII

This article is new.

ARTICLE XXIV

This is former Article XXI somewhat changed in language.

ARTICLE XXV

This is former Article XXIII with very slight changes.

ARTICLE XXVI

This is former Article XXII without change.

ARTICLE XXVII

This is former Article XXIV with slight changes.

With this may be read the report of the Drafting Committee accompanying the new text, most of which is nothing more or less than a list of the changes made by the Committee. It is Annex 1 to the English minutes of the Ninth Meeting. There is no corresponding report in the French. The report refers to the Articles by the old, not the new, numbers. I note here that the report suggested Geneva as the Seat of the League.

I was present at the meeting of the Drafting Committee on February 12; with an interval for lunch it lasted till five o'clock.

The positive result of the Drafting Committee's work, the new text and its report, I have already mentioned; something should now be added as to its proceedings.

Once more there was brought up the French amendment for an international force, which of course Cecil was not willing to accept and did not accept at all. Cecil's suggestion, which had been made at the meeting of February 11, for the creation of a Permanent Commission to advise the League on military questions generally, which the Committee adopted as Article 9 of the Covenant, was as far as he would go. Some details of the discussions are mentioned in this extract from my Diary:

> The Committee considered and went through the draft during the morning but reached difficulties with the French, who proposed amendments regarding an international armed force. Finally, Cecil, saying that he was speaking very frankly but in private, said: that America had nothing to gain from the League of Nations; that she could let European affairs go and take care of her own; the offer that was made by America for support was practically a present to France, and that to a certain but to a lesser extent this was the position of Great Britain which, while vitally interested in continental affairs, yet to a certain extent could stand apart. Accordingly, he wished to say very frankly to the French

delegates that in his view they were saying to America, and to a lesser extent to Great Britain, that because more was not offered they would not take the gift that was at hand, and he warned them very frankly that the alternative offer which we have made, if the League of Nations was not successful, was an alliance between Great Britain and the United States. He asked them to consider this before they made any final conclusion. At this the meeting adjourned for lunch.

The British laid before the Drafting Committee their proposal of amendments,[1] which I print here:

PREAMBLE

In order to place in the forefront of the Covenant for the information of public opinion a summary of the objects which the Covenant is designed to secure, it is suggested that the Preamble should be redrafted as follows:

"In order to promote international co-operation and to establish international peace and security upon enduring foundations, the High Contracting Parties adopt this constitution of the League of Nations and pledge themselves to the following policy, the detailed application of which is provided for in the Articles of this Covenant:

1. They unite in establishing permanent organs for the conduct of international relations through which the will of the nations associated in the League may find expression.

2. They unite in prescribing open, just and honorable relations between nations.

3. They accept the obligations hereinafter set forth for the avoidance of war; they recognize the understanding of international law as the actual rule of conduct among governments, and they undertake to maintain justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another.

4. They undertake to safeguard the rights of all nations members of the League.

5. They entrust to the League the study of the means whereby the burden of armaments may be removed from their peoples and whereby the dangers involved in the trade of arms and ammunition may be averted.

6. They embody in the constitution of the League securities for the well-being and development of peoples not able to stand by themselves under the strenuous conditions of the modern world.

[1] Cf. Document 11, the amalgamation by Lord Eustace Percy of the British and Wilson drafts.

7. They agree to establish a permanent organization for improvement of labour conditions.

8. They unite in a solemn recognition of the principle of freedom of conscience and religion.

9. They combine to safeguard commercial intercourse between them in the interests of peace.

10. They will include in the organization of the League machinery for the investigation, administration or settlement of any matters of common concern to the life, health or interests of their people which may be entrusted to the care of the League by the treaties of peace or by any future international agreement."

GENERAL FORM OF COVENANT

It is suggested that the Covenant should be divided into four chapters dealing respectively with the Constitution of the League (Chapter 1), the Avoidance of War (Chapter 2), the Special Functions of the League (Chapter 3) and Concluding Provisions (Chapter 4).

It is suggested that Chapter 1 should include Articles 1 to 6 and 23, but it is also suggested that a new Article is needed after Article 3. This new Article 4 should run as follows:

"The High Contracting Parties agree that there shall be established as part of the organization of the League a Representative Assembly elected by the legislative bodies of all States members of the League, and that this Assembly shall meet regularly at the Seat of the League for the purpose of examining and advising upon the policy and action of the Body of Delegates and the Executive Council and of all international organs placed under their supervision or control. They entrust to the Executive Council the duty of formulating the constitution of this Assembly, which shall meet for its first session at the Seat of the League not later than twelve months after the present treaty comes into force."

A similar insertion to be made in Article 1.

The present Articles 4 to 6 will then be numbered 5 to 7 and Article 23 will be numbered 8.

Chapter 2 should include Articles 9 to 15.

Chapter 3 would begin with Articles at present numbered 7 and 8, which would then become 16 and 17. The remainder of Chapter 3 would consist of the present Articles, 16, 17, 18, 19, 20, 21, and 24, which would then be numbered 18, 19, 20, 21, 22, 23, and 24. There would be some advantage in adding two Articles to Chapter 3 covering the points in the sub-section 10 of the Preamble. There are, as a matter of fact, a number of matters such as, for

instance, the international control of opium, morphia and other dangerous drugs which the competent British officials are particularly anxious to bring within the scope of the League, and there would be great advantages in bringing under the supervision of the League as many as possible of the already established international bodies, some of which are very anxious to co-operate in the League (e. g. the National Institute of Agriculture at Rome). The following drafting is provisionally suggested:

ARTICLE 25

The High Contracting Parties further agree to carry out through the instrumentality of the League any other functions which may be entrusted to the League by the treaties of peace, and to promote through the same instrumentality the common study and regulation of important economic, sanitary or other similar problems.

ARTICLE 26

The High Contracting Parties agree to place under the control of the League all international bureaux already established by general treaties if the parties to such treaties consent. Furthermore, they agree that all such international bureaux to be constituted in future shall be placed under the supervision of the League and shall be located at the Seat of the League.

Chapter 4 will simply include Article 22, which will now become Article 27.

These proposals would have changed the form of the Covenant by dividing it into Chapters as well as Articles. I opposed this change at the morning session of the Committee and Wilson sustained my view; also the British would have completely recast the form of the Preamble. This also Wilson specifically disapproved.

During the luncheon interval between the morning and afternoon sessions of the Drafting Committee, I saw President Wilson at the Quai d'Orsay. My Diary contains the following note of the conversation:

President Wilson came in with M. Pichon, and I tried to see him then, not knowing that it was a ceremonial entry, but the President said that he would come out in a moment and talk to me, which he did. I then told the President very briefly what Lord Robert Cecil had said, and I told him also that it was proposed to amend the Preamble very extensively and asked him his

> view on that, to which he replied that he did not favor it. He thought that it would be a mistake, and I told him that I would communicate that to the Committee of Four. I told him also that I had taken the responsibility of disapproving the suggestion in the morning of dividing the Covenant into chapters and articles, and he approved of my course. I then told him that the question of time was very pressing and asked him what plans he wished regarding the presentation of the final text. He said that if possible, he would like to have it tomorrow, but that he did not intend to go before the Plenary Conference, but rather to ask for the appointment of a sub-commission to lay the matter before the neutrals. I told the President that I would do my best to see that his wishes were carried out, and then proceeded again to the meeting of the Committee of Four, at which I was late. The Committee proceeded with its revision, and I informed them of the views of the President regarding the Preamble, and also of his intentions regarding the sub-commission.

Wilson later decided on a different procedure as to the "final" text and laid it before the Plenary Session of the Peace Conference on February 14.

One important amendment suggested by the British paper was the creation of what was called a "Representative Assembly," to be elected by the legislatures of the Members of the League and to be a third organ of the League in addition to the Council and the Assembly. This was really Smuts' idea so far as the British were concerned and he brought it up on February 13, at the Ninth Meeting of the Commission. I shall discuss it more fully later.[1] It was not adopted by the Drafting Committee whose report on the proposal damned it with faint praise.

Other British proposals of consequence were in the line of extending the humanitarian activities of the League and the putting under the control of the League international bureaus in general. The latter the Drafting Committee adopted as Article 23 of the new text (now Article 24); the former was passed over, but finally became in substance a part of what is now Article 23.

It may be well to mention here the few changes in the Covenant which were made by the Drafting Committee, not previously discussed, and aside from those which may be called merely drafting changes in the strict sense.

The title "Secretary General" was adopted instead of "Chancellor." Curiously enough I have at times found some misapprehension as to the meaning of the expression "Secretary General."

[1] See Chapter XXII.

Of course it means nothing more nor less than General Secretary, the adjective being placed after the noun as in the French.

Article 6 regarding admission of members of the League (7 in the new text) was somewhat recast, in view of the amendment offered by the French;[1] the language of the Article for disarmament (8 in both texts) was revised and the Council at one point was substituted for the Assembly.[2]

Into Article 10 were introduced the words "or in case of any threat or danger of such aggression."

The "religious" Article (21 in the new draft) was recast; but the Drafting Committee recommended its omission, saying in its report (Article 19):

> The Committee feel that, in view of the complications of this question, it would be preferable to omit this article altogether. If, however, there is a strong feeling in the Commission that some such provision should be inserted, they suggest the following drafting:
>
> > The High Contracting Parties agree that they will not prohibit or interfere with the free exercise of any creed, religion or belief whose practices are not inconsistent with public order or public morals, and that no person within their respective jurisdictions shall be molested in life, liberty or the pursuit of happiness by reason of his adherence to any such creed, religion or belief.

Thus it can hardly be said that the Drafting Committee made any serious changes. It clarified the text somewhat and disposed of the pending amendments, although one proposal, as to Article 8, was reported without recommendation and appears in the text in a parenthesis. This was the Portugese amendment, to add to the second paragraph the words:

> due regard being paid in such recommendations to the necessities of those countries which are not able to manufacture for themselves the munitions necessary for their safety.

Questions of the final wording were really left to Mr. Hurst and myself. An instance of this is that the Drafting Committee Report, in Article 24 (called by its old number 21), used the expression "every future treaty or international engagement" which Hurst and I changed to "every treaty or international engage-

[1] For the text see p. 206 *sq.*

[2] This was really changed after the meeting of the Drafting Committee, as will be seen.

ment entered into hereafter"; and I shall mention below the changes that I agreed to with Lord Eustace Percy.

In fact the Report of the Drafting Committee (Annex 1 to the English minutes of the Ninth Meeting) represents the work of that Committee at the time it adjourned and does not really take account of the changes made after it adjourned. Thus, as stated above, the numbers of the Articles in that Report are the earlier numbers, not the numbers of the Articles in the text of the Committee; these had been somewhat rearranged by Hurst and myself after the Drafting Committee adjourned.

The Drafting Committee got through with its work on the text at five o'clock in the afternoon (February 12), but left clerical changes, including questions of rearrangement to Hurst and myself; he and I went on for three hours more. Hurst wanted to recast the Mandates Article (now 22) which became 19 in the new text, but to this I could not agree; so the changes made by us were slight and need not be mentioned in detail. Any one interested in seeing exactly what they were may ferret them out by a comparison of the English text which went to the Drafting Committee with the Report of that Committee and the new text, taking into account the following two or three paragraphs of this narrative.

Later in the evening over the telephone I agreed to some further minor changes with Lord Eustace Percy and during the night the proof-reading brought about one or two more of an entirely trivial character. None of these is in itself of sufficient importance to record; but for another purpose, namely, to show the care with which the record of the text was kept, I print two papers in connection with them.

The first is a note made at the time of the agreement over the telephone with Percy:

1. Preamble. Strike out "the use of armed force" and insert "war."

2. Article v, second paragraph, strike out "as secretary," and insert "in that capacity."

3. Article xxiii, strike out "and shall be located at the seat of the league." [1]

4. Article viii, first paragraph, strike out "Body of Delegates," and insert "Executive Council." [2]

[1] These words were at the end of the Article.
[2] i.e. as the last two words of the paragraph.

5. Article VIII, third paragraph, after the word "conceal" insert "from each other."

6. Article VIII, third paragraph, insert after the words "purposes" the following "or the scale of their armaments," and later on in the same paragraph strike out the words "the scale of their armaments and." [1]

Percy said over the phone that Lord Robert Cecil would announce in the meeting tomorrow that the changes in Article VIII had been made this way at his request, so as to clear me from exceeding my authority in the matter.

February 12, 1919—10:30 P.M.

The second is my letter to Hurst of February 13, which lists the changes made during the proof-reading:

Herewith are six copies of the latest text of the Covenant. It is in accord with the Text agreed upon by us at our conference last evening, with the following exceptions:

(a) The changes agreed upon between Lord Eustace Percy and myself over the telephone of which he has doubtless informed you.

(b) In Article III, I have changed the position of a comma, and in Article IV, I have added at the end of the Article the words "of America."

(c) A comma has been inserted in the last paragraph of Article XVI.

(d) Uniform spelling has been adopted for "Mandatary," as a noun, and "Mandatory," as an adjective.[2]

The printing of the English text from the Drafting Committee,[3] including the changes noted above, was completed at the American Printing Office a little after five o'clock in the morning (February 13). At the same time, an equivalent French text was prepared, which was typed and mimeographed.

While my records say very little about it, there is no doubt that this French text was prepared by the French, probably by de Lapradelle, although I cannot be positive as to this.

It is necessary to say something in detail about this French text, which was intended to be the equivalent of the English text of the Covenant from the Drafting Committee. As I said above,

[1] These words came after the words "as to."

[2] While this was the spelling in the print made under my direction, it was not finally accepted, for "Mandatory" is used throughout.

[3] Annex 2 to the English minutes of the Ninth Meeting of the Commission.

this English text is Annex 2 to the English minutes of the Ninth Meeting. In the French minutes there is no corresponding Annex; instead of this, the French minutes of the Ninth and Tenth Meetings preface the discussion of each Article by saying that Wilson or Cecil read [1] the text of the Article, which then follows in French. Now, these Articles as thus set forth are *generally* the same as the French text which was actually before the two meetings of the Commission. There are, however, certain discrepancies in the text thus given in the French minutes, and the Preamble is omitted. All these differences have been noted in footnotes in the French minutes of the Ninth and Tenth Meetings in Document 20, so as to show the French text before these two meetings, which I will call the French Text from the Drafting Committee.

As may be seen by comparing this French Text from the Drafting Committee with the translations of the various Articles previously circulated, it is an edition of the French text which is almost entirely revised and almost wholly new. Its style is French. Taking into account the few changes made by the Commission at its two meetings of February 13, it is substantially the French text laid before the Plenary Session of the Conference on February 14. There was, however, in the meantime *some* revision of the French, even in unamended Articles.[2]

[1] This reading of course was of the English text.

[2] Examination of the footnotes to the French minutes of the Ninth and Tenth Meetings will disclose instances where this later revision is given as the text "read."

CHAPTER XX

NINTH MEETING OF THE COMMISSION

On February 13 the Commission on the League of Nations completed for the time being its work on the Covenant. There were two meetings on this day, the Ninth and Tenth. The procedure was more formal than it had been previously. The Articles were read one by one; amendments were proposed and where there was difference of opinion, votes were taken; and in several cases amendments were thus voted down.

In the morning meeting, with Wilson in the Chair, the Commission got through with the Preamble and the first seven Articles of the text from the Drafting Committee.[1] Several of these (1, 4, 5 and 6) were passed without change or discussion.

For the beginning of the Preamble, Larnaude proposed as an amendment language which would have condemned those responsible for the war and recognized the work of the Conferences of The Hague.

The text of this proposal was as follows:

> Les Puissances signataires du présent pacte, unies dans un même sentiment de réprobation vis-à-vis de ceux qui ont déchainé la guerre qui vient de se terminer, fermement décidés à en rechercher toutes les responsabilités, voulant en même temps établir les règles d'un droit international dont le but essentiel sera de ne permettre à la force armée d'intervenir que pour la défense du droit, de faire régner la justice entre les peuples et de maintenir le respect scrupuleux de la parole donnée, reprenant et developpant l'œuvre commencée par la Conférence de La Haye. . . . .

The first words of this amendment were withdrawn; but its second part was pressed to a vote and rightly rejected.[2] The attempt to recognize the Hague Conferences in the Covenant was largely intended as a matter of compliment to Bourgeois; but to intimate that the Covenant was a continuation of what was done at The Hague would have been a very misleading kind of half truth.

[1] Annex 2 to the English minutes of the Ninth Meeting of the Commission.
[2] By a vote of 10 to 5.

The discussion of Article 2 brought into clear view the difference of opinion between Smuts and Cecil as to the advisability of the "Representative Assembly" amendment; but as I shall consider this in another place [1] I do no more than mention it now.

The discussion of the proposal of Smuts made it clear that the other members of the Commission were unanimous in believing that the representatives of any State in the Assembly must be the free choice of the Government of that State. The debate had the direct result of putting into the Article an explicit statement that each member of the League had only one vote in the Assembly. It was suggested that "this goes without saying," in reply to which Reis very aptly quoted Talleyrand to the effect that it would go much better if it were said;[2] and another point brought up was as to some limitation of the number of representatives of each country in the Assembly.[3] After rejecting five as too many, the Commission agreed on three as the maximum; so these words were added to the Article: "Each of the High Contracting Parties shall have one vote, but may have not more than three representatives."

Article 3 brought up again the question of the composition of the Council. The debate resulted in a slight change of verbiage, so as to make it wholly clear that the choice to be made by the Assembly was a choice of the four Members of the League to be represented on the Council in addition to the Great Powers, as distinguished from a choice of *representatives*.[4]

This change was in the first paragraph of the Article and it is not mentioned in the Minutes. In the text from the Drafting Committee the first sentence of Article 3 read thus:

> The Executive Council shall consist of representatives of the United States of America, the British Empire, France, Italy and Japan, together with representatives of . . . . . other States members of the League appointed by the Body of Delegates on such principles and in such manner as they think fit.

[1] See Chapter XXII.

[2] This is not in the minutes; see p. 235.

[3] Cf. Article 2 of the Hurst-Miller Draft, Annex 1 to the minutes of the First Meeting of the Commission, where the language was "not more than two representatives."

[4] See the remarks of Pessôa quoted in the minutes. Grammatically, the question was whether "appointed" (French "nommés") qualified "representatives" or "Members of the League." The language was intended to mean the latter; but the other sense was at least arguable.

The change which was made put a full stop after "League" with this sentence to follow:

> The selection of these four States shall be made by the Body of Delegates on such principles and in such manner as they think fit.

That there should be four such non-permanent Members finally received unanimous assent; the Small Powers had carried their point. Furthermore the filling up of the blank where these four Powers were in the first instance to be named was left to the Peace Conference.

The question of the composition of the League itself was raised in the debate on Article 7. How were the neutrals to come into the League? That generally they should be asked to join was conceded; that they would not be Signatories to the Treaty of Peace and thus to the Covenant was obvious.

As reported by the Drafting Committee, the first paragraph of Article 7 read thus:

> Admission to the League of States not signatory of the Covenant requires the assent of not less than two-thirds of the States represented in the Body of Delegates, and shall be limited to free countries, including Dominions and Colonies.

The discussion took a very wide range. Cecil again mentioned the fact that India would come in as a Signatory, to which Wilson assented. Reference was made to the neutrality of Switzerland and even to Abyssinia; in fact there were certain neutrals such as Mexico and Costa Rica with which some of the Powers did not then have diplomatic relations. No allusion was made to these and nothing was said as to just when and how the list of the invited neutrals would be made up. But a clause providing for their invitation by name in a Protocol to the Covenant was inserted, as proposed by Cecil.

There are here some differences between the English and French minutes. One of these which is specially noticeable will best be seen by parallel citations of the corresponding expressions:

ENGLISH	FRENCH
Following an exchange of views between Mr. Hymans, Mr. Larnaude and Mr. Orlando,	A la suite d'observations échangées entre M. Hymans (*Belgique*), Larnaude (*France*)

Mr. Bourgeois recalled the fact that the scheme of the League embraced three stages. . . .

et Orlando (*Italie*), et Lord Robert Cecil (*Empire britannique*), il est entendu que le protocole d'invitation n'entrera en vigeur qu' après la signature du traité de paix.

M. Léon Bourgeois (*France*) rapelle que l'on a prévu trois phases dans l'étude de la Société. . . .

The meaning of the interpolation in the French minutes is obscure; and, whatever it may be, it is, in my opinion, a late addition to the minutes, representing nothing that actually took place. The internal evidence here is rather strong and it is confirmed by the stenographic minutes of this meeting which I quote below [1] and which give no intimation whatever of any such understanding as is recited in the French minutes.

But there was also to be considered the case of States neither Signatories to the Covenant nor invited in the first instance to join the League. And here there was an interesting discussion of the real meaning of "fully self-governing countries" and of the French equivalent of that expression. In the earlier draft, the words "self-governing States" had been used in the English; [2] in the text reported by the Drafting Committee were the words "free countries" or, in the French, "pays libres," which, as Larnaude pointed out, was less accurate. So the wording was changed in the English to "fully self-governing countries," which is rather difficult to translate, but which the French for the time being called "pays de self-government total," a strictly accurate equivalent perhaps; but to use it in the French would be a rather unfortunate admission that that language is not as wholly complete and precise as is generally supposed. The point was to come up again.

So the first paragraph of Article 7, to which the discussion had been confined, came to read thus:

> Admission to the League of States not signatories to the Covenant and not named in the Protocol hereto as States to be invited to adhere to the Covenant, requires the assent of not less than two-thirds of the States represented in the Body of Delegates,

[1] p. 229 *sqq.*
[2] See the minutes of the Third Meeting and p. 157 *sq.*

and shall be limited to fully self-governing countries including Dominions and Colonies.

With this the Ninth Meeting at one o'clock took an adjournment to 3:30. As there was to be a Plenary Session of the Conference the next day (February 14), at which the Covenant was to be presented and for which a very large number of prints of the Covenant would be necessary, the text thus far passed, i.e., through Article 7, went to the American printers during the recess.

The account in the minutes of this morning meeting of February 13 (Ninth Meeting of the Commission) is supplemented by a translation of a French stenographic report. While this is not complete, it gives much of the debate at length, and I print it here:

The meeting began at 10:30 a.m. at the Hotel Crillon.

M. Léon Bourgeois asked if the second reading was now to be begun and if definitive votes would be taken either on the text or on the amendments proposed to the text.

President Wilson replied in the affirmative.

M. Léon Bourgeois: If we are beginning a second reading we must have the right to propose amendments. There should be an opportunity to vote on our amendments and whether these are adopted or rejected, the result of the vote will be recorded in the *procès-verbal.*

M. Larnaude: In accordance with this procedure I request that we should vote first on my amendment. If it is rejected we will vote on the text which has been laid before us.

This is the Preamble which I propose:

"The powers signatory to the present pact, bound together in a common feeling of reprobation towards those who began the war which is just ended, firmly resolve to establish the responsibility therefor, desiring at the same time to lay down rules of an international law whose primary object shall be that of preventing the use of armed force except in the defense of the right and to establish the reign of justice among peoples and to maintain a scrupulous respect for international engagements, continuing and enlarging upon the work began by the Conference of the Hague * * *"

The rest of the Preamble will stand without change.

That is the text which I propose, I need not repeat the explanations which I have given nor the reasons for which the

sub-committee rejected my proposals. I ask the President to put my amendment to the vote.

M. Reis: We are now making a covenant of union and fraternity for the present and for the future. I do not wish to see in this covenant any words which recall the terrible conditions of the war. Since all the powers of the east and of Europe including those who have been our enemies will one day join themselves to us in this covenant I should not like to see at the beginning of this covenant words which would recall our hatreds.

M. Léon Bourgeois: There are two different points involved; on the one hand condemnation of those responsible for the war and on the other hand recognition of the work of the Hague.

M. Reis: I agree with you so far as the work of the Hague is concerned. It is because your amendment refers to two different matters that I ask for the division of them.

Lord Robert Cecil: The Commission considered that it was preferable from the point of view of nations who will enter later on into the League not to mention the Conference of the Hague. It seems to me better that the structure which we are now creating should appear like a new thing and should not suffer from the criticisms which have been directed toward the work of earlier conferences. Personally, therefore, I should regret it if any allusion were made to the Hague much as I respect what was done there.

The case is the same as with regard to the responsibility for the war. It is a controversial matter which it would be better not to introduce into our document in order not to make difficulties for states which have not participated in the war but who will in the future wish to join the League.

M. Larnaude: In reply to the observation made just now by M. Reis may I say that I should not wish to introduce into the League any element of hatred for the future and therefore withdraw the first part of my amendment.

M. Léon Bourgeois: I request that a vote be taken on the question of whether reference should be made to what has been done in the past by the States who are today associated in the work of giving force and coördination to the law.

President Wilson: The first half of the amendment having been withdrawn I call for a vote upon the second part which refers to the work of the Hague Conference. (The amendment was rejected by a vote of 10 to 5.)

It was understood that this vote in no way indicated that the Commission condemned the ideas embodied in the amendment of M. Larnaude but that the Commission considered merely that it was inadvisable to introduce them into the text.

ARTICLE I

The President read this Article.
There was no comment.

ARTICLE II

General Smuts: I very much fear that public opinion will be greatly disappointed by this Article inasmuch as it anxiously desires to be represented. There should be in this assembly not only official and permanent representatives, but also representatives chosen out of the legislative assemblies or political parties of the states in accordance with rules which should later be laid down.

For the sake of satisfying public opinion I propose the following amendment:[1]

M. Larnaude: I should like Lord Robert Cecil to give us a back-ground for the discussion of this proposition.

Lord Robert Cecil: I am afraid that the proposition which has been put before us will not satisfy public opinion. In any event there is no occasion to make a change in the project until public opinion shall have been able to grasp it and until it has been able to announce its attitude with regard to it. For the time being the drafting committee does not think that it is necessary to change the project; it is much better to wait until we are more clearly informed as to what public opinion desires and until the Conference shall have been apprised of it in a plenary session.

M. Larnaude: I believe that Article II is satisfactory to General Smuts. According to this Article no restrictions are laid down concerning the choice of representatives. It is not necessary that the choice fall upon an Ambassador or upon a Minister. It may just as well fall upon a member of parliament or even upon a representative of some large peace association. I believe that General Smuts is influenced by the thought, that in the original text, the way was open only for Ambassadors and Ministers but when we say "representatives" we are allowing the government to choose them as it will.

President Wilson: The plain people and the working classes who have seen into what they have been led in the war by governments are made anxious by the thought that they will not be represented in this assembly. The number of representatives is not definitely fixed and it would be a good thing to fix upon a scheme which would allow the common people to feel that they will be given definite representation; but it is substantially impossible to satisfy the popular demand inasmuch as the people would not be able to have more than one or two representatives whereas

[1] There is an omission here. The text of the proposed amendment is in the English minutes and also at p. 274.

the number of electors is very great particularly in certain countries like the United States.

Therefore I do not believe that there is occasion to change the Article as it stands, for it contains sufficient flexibility for the introduction, later on, of a system entirely satisfactory to public opinion.

M. Hymans: The President has just said that inasmuch as the text of the Article provides for representatives without fixing their number, it would be permissible for each state to be represented by whatever number it might think advisable. I should like to call attention to certain inconveniences in this scheme.

In my opinion it is necessary to lay down a general rule. If not you will see one state represented by a group of very energetic, influential and passionate men whose number will not stand in proper relation to its national position and you will see another state which will be represented by only one or two delegates, so that by the very nature of things, aside from the question of voting power you will come to the point of a definite split. Moreover since each state has only one vote extremely complex problems will arise. When the moment of voting comes, if you have a group of individuals corresponding to various divisions of populations which in our western countries correspond to political nations, (?) and there will constantly result from it battles and conflicts which will seriously complicate matters.

From another point of view (and although I am a parliamentarian myself) I should like to make the following objection: this assembly of an international parliament will be a beautiful audience indeed. There is not a parliamentarian, there is not a party leader, there is not an orator in all of the parliaments of the world who will not have the ambition to sit in this great international parliament and make a speech, and I believe that instead of having a dignified and serious minded assembly you will have a big unwieldy parliament before which will be brought all sorts of questions, where every political party will try to realize its ideal and to announce to the world its platform. For these reasons I am of the opinion that only inconveniences can come from this proposal.

I should like to point out moreover one difficulty concerning the representation of working classes.

In the society in which we live today, in our countries where suffrage is universal, it may clearly be presumed that the man who is nominated by his government to represent it will put before the General Assembly the expression of his country's will, of public opinion and the opinion of all the classes of his country. If he does not all kinds of troubles will arise, I take my own country, Belgium, as an illustration. We have there a class which

is engaged upon industrial work and which is almost equal in number to the class which is engaged upon agricultural, but these classes make up two absolutely different worlds, and if a representative is given to the purely industrial class the agricultural class will protest loudly, and there will be much the same sort of thing in many other countries.

Moreover as a practical matter you realize that in the working world properly so-called many trade unions organizations in certain countries at least have at the same time a political character. A trade union comes under the ægis of a certain political party. I have even noticed the fact in Paris where I called together the technical delegates from my country in order that they might give me their advice upon certain questions of international legislation regarding labor. At once the delegates of another party found fault with me because I had neglected to give an adequate representation to their party. Nothing is more difficult than to plan a scheme of adequate representation. At the danger of appearing too conservative, I believe that we can later say what ought to be done but that for the time being we ought to adhere to what we have decided upon. Let us first of all make the experiment, never forgetting that governments have responsibilities but that political parties have not.

M. Veniselos: Article xx looks toward the establishment of a Bureau of Labor. Do you agree to it?

M. Hymans: It is a matter for the Commission on International Legislation to create a regular labor conference.

Lord Robert Cecil: Each power may be represented as it sees fit. It is right to leave to it the responsibility of making the choice. In England, for example, it is likely that we would send one of the leaders of the Labor Party, a representative of religious interests, and, I hope, a woman. As for the number of representatives for each state, . . . that question may be decided by the Body of Delegates itself.

President Wilson: Every government which will be a member of the League is a responsible government and if it does not satisfy public opinion, it will be subject to criticism and so compelled to choose representatives who will satisfy public opinion.

M. Léon Bourgeois: We are told to look at this from a practical point of view. I am impressed by the remarks made by M. Hymans on the inconveniences which may arise from admitting a large number of people into this assembly and from carrying on in that assembly discussions on which the Associated countries are themselves internationally divided. I believe that if we desire to give authority to the decisions of the Body of Delegates, it follows that each Government which, itself, is responsible as Lord Robert Cecil has said, should be represented by somebody

who represents it in reality. It is necessary, however, that it designate the man who is to represent it in the Body of Delegates. Unless that is done, when the meeting comes to count the votes, you will have in each State divisions which will prevent the common will of the represented States from being expressed. We have insisted that among the conditions which we wish to impose upon the States which should have the right to become a member of the League of Nations, the word "responsibility" should figure. President Wilson has justly said that the Governments must be considered as being responsible. The idea of responsibility, therefore, runs through the whole matter. Since the Government is responsible it should make its choice, and having made this choice, it should come to an understanding with the internal parties of the country that its representative should express the will of the majority of its citizens. If later on, the majority should become a minority, there will be a new representative who will represent the new majority; but it is imperative, that, at a given moment each one of the Governments shall be able to say: There is my delegate and my delegate at the present moment represents the prevailing opinion of the majority of my citizens. The Government is responsible; and if it takes the wrong attitude it will be overthrown in its own country.

It is necessary that this important matter of free choice of representatives should appear in this article. Moreover to respond to the idea of equality which is in everyone's heart, we should say, "of all the High Contracting Parties" instead of simply "the High Contracting Parties."

M. Hymans: Lord Robert Cecil has introduced us to an ideal system of representation,—that of nominating the two or three most capable men at a given moment. Once you have laid down the principle of a number of representatives, immediately public opinion will act upon it and in place of having a parliament which will meet every three or four years, you will end up by having an international parliament holding annual meetings. Inasmuch as all parties will be represented there will always be some who will say, "this question must be brought before the League of Nations" and each party will seek the vote of the League. I am speaking, I recognize perfectly well, for countries on the Continent whose life is made up of parties. Last of all elections will take place, and the international parliament will end up by no longer carrying out the idea which prevailed when it was first conceived.

M. Larnaude: Are you asking that the number of members of the parliament be limited?

M. Orlando: The question raised by M. Hymans may be divided into two separate points:

First of all we must know whether the States shall have the

same number of representatives. I do not believe that there is any difference of opinion in this matter. The States *must* have the same number of representatives for without this (I am making a paradoxical assumption) a State will have five representatives and will have only one voice;—a situation which will upset the balance of the League, I believe, therefore, that it is understood that the States shall have the same number of representatives.

M. Léon Bourgeois: It must be so expressed.

M. Orlando: The second point is that we must know whether the number of these representatives is to be determined in advance.

I believe that this is not necessary. It is largely a question of detail which can be settled as a matter of administrative practice (?). The number of representatives can be settled upon according to the importance and the kind of questions in controversy. It will not be necessary to send five representatives to sit at a meeting when the agenda is brief and when only questions of procedure of a wholly secondary importance are to be discussed.

As for the issue raised by General Smuts I beg my colleagues not to insist upon it. According to my view, it is important to know whether the members of the League shall be or shall not be the representatives of the several states. Every other question depends upon that. It is an entirely different question from that of knowing whether a state will prefer to select its representatives from one group or another. At this very moment there are certain deputies making this statement about me; that I go to Paris yet at the same time I continue to vote against them in the assembly. I say to them, "of course."

It is impossible for a state like Italy, for example, to be represented by two people one of whom supports the government while the other opposes it.

M. Larnaude: There must be freedom of choice.

M. Orlando: Absolute freedom of choice.

M. Larnaude: The governments exercise their power of choice on their own responsibility. They are free to be represented by somebody who is not of their opinion. Would it not be possible, however, to set limits to the maximum number of representatives.

M. Orlando: The maximum might be fixed at five.

M. Scialoja: It must be stated that these five members will have only one vote.

Lord Robert Cecil: That is the practice in every international convention. It goes without saying.

M. Reis: Allow me to remind you of what Talleyrand said to someone who remarked to him "that goes without saying." He replied "Yes, it goes without saying, but it goes very much better if you do say it."

M. Léon Bourgeois: Each High Contracting Party has only

one vote but it may be represented by a maximum of five persons.

M. Vesnitch: This new development causes me a certain amount of uneasiness. I am afraid that by increasing the number of representatives, the discussions will not be bettered.

President Wilson: After a little time speech-making before the League will lose its attractiveness.

M. Larnaude: We should take into account the parliamentary rules which will be established and which as they say in America will act as a guillotine to discussion.

M. Léon Bourgeois: I propose that the maximum number be fixed at three.

M. Larnaude: I agree to this reduction.

President Wilson: I will put to the vote the proposal to fix the maximum of representatives for each Contracting Party at five.

(The proposal was rejected.)

President Wilson: Consequently the maximum number of representatives is fixed at three.

ARTICLE III

President Wilson: I will read Article III.

M. Orlando:[1] I have a slight suggestion to make with regard to the wording. In the French text—I do not know whether the same difficulty appears in the English text. It is said that "That the proposal * * * may be referred not only to the representatives of the four states members of the League, but to all the representatives equally." There is an ambiguity which must be cleared up. It is necessary to say:[2]

General Smuts asked whether the neutral powers who will later adhere to the Covenant should be considered as original signatories to the covenant or as subsequent adherents to the pact. In the latter case they would be subjected to the necessity of being admitted by a majority of two-thirds. Would such a condition not effectually prevent their adherence?

President Wilson replied that the League was formed by the powers who had fought together during the war. But that the conditions of admission for the other states would not be of a kind to frighten away those who fulfil the requirements, and who loyally desire to co-operate with the League of Nations.

M. Orlando: General Smuts' objection should be taken into consideration. There are neutrals whose situation is difficult. There are some of them who are not sympathetic inasmuch as they have made profit out of the war and have maintained an

[1] The statement here is so jumbled in translation or otherwise as to be meaningless. There is nothing in the minutes or elsewhere which explains it.

[2] There is an omission here. The following discussion relates to Article 7.

egotist attitude. There are others, however, who have nobly done their duty and have kept their neutrality at the same time—Switzerland, for example. Had she not remained neutral serious consequences would have ensued. If she had permitted the Germans to pass through her territory, they would have reached Milan. Similarly it was a most threatening situation for France. Consequently there are neutrals whom we can invite to join the League of Nations.

President Wilson: Here is a new suggestion made by Lord Robert Cecil on this matter: That there be added at the beginning of Article VII, after the words "the admission to the League of states not signatory to the present covenant," the words "and not named in the protocol hereto as states to be invited to adhere to the covenant."

As a matter of fact it would be most difficult to draw up a true list and draw distinction between the neutral states.

M. Léon Bourgeois: The Conference at the Quai d'Orsay will perhaps not be happy in having to decide such delicate questions which may create differences of view. However, it is important that the Conference proceed to the end of its work in a spirit of most complete harmony, without any cause of disagreement coming to life. The idea expressed by M. Orlando is right and I agree with it. There are certain states to be invited, but it is necessary therefore that the treaty of peace be signed first of all and that the labors of the Conference be concluded. Negotiations along that line may be opened but to give the Conference the duty of drawing up a list of states which shall be invited is to present them with a dangerous gift; very much like the golden apples of the Garden of the Hesperides which were dropped along the road and which delayed the progress of the knight.

M. Diamandy: Don't you think that the fact of inviting certain states to the exclusion of others will change the character of the Conference? There is no need for drawing distinctions among those who will later join the League of Nations.

Lord Robert Cecil: All neutrals should be invited without discrimination.

M. Hymans: The only danger would be that of permitting them to join in the work of the Conference itself.

Lord Robert Cecil: They will not be associated with us. They will be invited when the Conference shall have ended its labors.

M. Léon Bourgeois: Suppose that one of the states which has been invited refuses to accept the invitation. I select an illustration in which no one could discover any kind of hostile feeling, since it is concerned with a state we love and for whom we have the highest regard. I refer to Switzerland. The President of the Swiss Republic came to Paris and we all talked with him. Swiss

people are tremendously interested in the problem of neutrality. They are not inclined to enter into the League of Nations unless it be admitted that their neutrality lasts on. Since we have accepted the principle that neutrality disappears within the Society of Nations, the people of Switzerland see a real danger to their independence and to their long standing traditions if they enter into the League unconditionally.

There is a complete difference of view between our Belgian friends and our friends from Switzerland. Belgium does not wish to see neutrality continue to exist while Switzerland strives to maintain it. I believe that the League should be open to all nations who fulfil the requirements, but I believe that it is far better not to draw up an invitation list.

M. Larnaude: Originally according to our plan all states had to submit to a two-thirds majority vote. Now another idea is introduced. There are some states who are subjected to the vote of a two-thirds majority; there are others who are not so subjected. It is well and good enough to invite them but who will do the inviting?

M. Hymans: As a matter of fact all neutral states will be admitted to the League by the agreement of all of us. Therefore there is no question for discussion in this regard. The provisions for a two-thirds majority may therefore be disregarded.

M. Orlando: It may be said that, to speak frankly, there exists a certain uneasiness among the neutrals.

M. Hymans: Some neutrals have not taken part in the war. On the contrary they have made a profit out of it.

M. Orlando: All of them have not made a profit out of it, and the kind of examination which they will have to go through before being admitted into the League of Nations is calculated to upset the self-esteem of certain of them. It is a question of political handling and tactics, for we all agree that they should be taken in. The admission of certain neutrals will receive the unanimous approval of the members of the Body of Delegates; but when the question arises of admitting Germany or Bulgaria, the issue will be scrutinized more closely.

M. Kramář: According to the text we cannot discriminate between them if they are invited. I believe that that is M. Orlando's view when he says that if the Council issues an invitation, it must be done unanimously.

Lord Robert Cecil: The main idea is not to discourage neutrals and the best scheme for accomplishing this effect is to publish a protocol giving by name the states who are to be invited to adhere to the League. This protocol will not have to be effective until after the signature of the treaty of peace.

M. Hymans: It is quite necessary, in fact, that the neutrals

should not participate in our labors before the conclusion of peace.

M. Orlando: We are in agreement on that.

M. Léon Bourgeois: Before the opening of the Conference it was said that the Allies would determine among themselves the conditions upon which the League of Nations should be organized and its guiding principles. That is what we Allies are now doing. We must stand together. That is the first step.

The second step consists in inserting into the treaty of peace certain stipulations such as that of the limitation of armaments or of disarmament itself.

The third step, so far as the Allies are concerned, will consist in summoning, immediately after the treaty of peace, a general conference in order to establish the same rules among all the states invited to adhere to the League of Nations. And it may be added: "After the claims and guarantees presented by various states have been examined and found satisfactory this Conference will vote on the question of admitting each of them into the League of Nations."

There is no question of opening the doors of the League of Nations to those who are not worthy to come in. A declaration would be issued saying that the League was open to all those who satisfied the conditions laid down. That would be tantamount to an invitation and would obviate the necessity of making a choice.

M. Larnaude: Plans for an universal conference are beside the point in view of facts and events. The question as it is put up to us is a political question of highest importance. It must be determined whether we who are establishing the League of Nations desire to invite immediately such states as have remained neutral, but whose institutions are similar to our own, who are friendly toward the Entente and who cannot conceivably be put on the same ground as Germany, Turkey and Bulgaria. It seems to me, as M. Hymans has said, that we cannot do that immediately. It is impossible. When will we take them into the League of Nations? After the treaty of peace, in some way or another, perhaps pursuant to a protocol. I am not arguing for any specific procedure. But it does seem to me that it is necessary to eliminate the business of voting on countries like Switzerland and Norway, for example. I am of the opinion that we can say that they shall be admitted, if they desire, with full rights into the League of Nations.

Lord Robert Cecil: I quite agree with you.

M. Larnaude: With regard to the other states, the League is not closed to them, they are not shut out; but we subject them to certain conditions of admission which cannot be imposed upon neutrals. These restrictions apply only to Germany, Bulgaria,

Turkey and countries which are badly administered, not to use a more violent form of expression. Such a procedure will not astonish them.

M. Léon Bourgeois: The invitation need not be made particular. What I am opposed to is that the Conference should choose between such and such neutral states, inasmuch as that kind of thing is likely to make trouble. A general invitation should issue, directed to all those who have not been belligerents.

M. Orlando: According to those conditions you would have to invite Abyssinia which is a neutral state but not a fully self-governing state. A choice must be made among them in order to carry out the conditions that they enjoy liberty.

M. Larnaude: It is unthinkable that we should say to countries like Switzerland and Norway or like Denmark which enjoy greater liberty than ourselves: "We are inclined to admit you into the League of Nations but it is first of all necessary that you enjoy full powers of self-government and that you give guarantees that you will loyally carry out your engagements." Such a condition can only be imposed upon countries which have acted against every rule of law.

For these reasons I ask that the article be retained.

Lord Robert Cecil requested that his amendment be voted upon.

The amendment was adopted.

Article VII was thereupon adopted with this amendment.

President Wilson: Inasmuch as I shall be unable to be present at this afternoon's meeting I ask you to be good enough to continue your labors under the chairmanship of Lord Robert Cecil.

The meeting adjourned at one o'clock to continue the discussion at 3:30 in the afternoon.

Wilson was absent from the afternoon meeting of February 13, the Tenth Meeting of the Commission, because, as he said, he had to go to the Council of Ten.

That meeting of the Council of Ten was in fact largely occupied with Syrian questions; but it is appropriate to insert here what was there said regarding the Covenant and the Report of the Commission:

President Wilson reported that the Committee to formulate plans for the League of Nations hoped to complete their labours that night. He wished to suggest, therefore, that a call be prepared for a Plenary Conference to be held tomorrow afternoon for the submission of the scheme and in order that full explanations might be given. The conclusions reached by the Commission would very quickly become generally known, and, therefore, in

his opinion, the final draft should be placed at once before the Plenary Conference. He asked, therefore, that a notice be prepared for issue on the following morning, if the Commission's report was then found to be ready for submission to the Plenary Conference.

M. Clemenceau enquired whether it was not intended that the report should, in the first place, be submitted for consideration to the Conference of the Great Powers. According to President Wilson's proposal the Plenary Conference would receive the report before it had been examined by the present meeting.

President Wilson replied that in the ordinary course of events the best plan would perhaps have been to circulate the Commission's report in the first place to the Conference of the Great Powers. He would point out, however, that the League of Nations Commission was not a Commission of the Conference of the Great Powers but of the Plenary Conference. Consequently, the first report ought, as a matter of fact, to go to the Plenary Conference. In accordance with his proposal the Plenary Conference would be asked to receive the report, and the Chairman of the Commission would then give the necessary explanations. That is to say, the report would be submitted by himself, and some of his colleagues on the Commission would subsequently give additional explanations.

Mr. Balfour thought that it would be a great advantage if President Wilson could explain the scheme to the Plenary Conference before he left for the United States of America. He would do this as Chairman of the League of Nations Commission and not as a member of the Conference of the Great Powers. The members of the latter Conference would not be committed to the scheme in any way. He, therefore, saw no objection to President Wilson's proposal.

M. Clemenceau understood the proposal to be that the report of the League of Nations Commission would be presented to the Plenary Conference by its Chairman (President Wilson), who would give certain explanations, after which the Conference would adjourn.

President Wilson agreed that this was his proposal, though he did not quite know how other members of the Plenary Conference could be stopped from making speeches if they wished to do so. But in any case no decision would be taken.

(It was agreed that a Plenary Conference should, if possible, be held at 3:30 on the afternoon of Friday, 14th February, 1919, in order to place before it the report of the League of Nations Commission. It was agreed that individual notices to this effect should be issued to each of the Delegates to the Peace Conference.)

Mr. Balfour's remark above quoted to the effect that the members of the Conference of the Great Powers "would not be committed to the scheme in any way" seems rather extraordinary in view of the fact that all these Great Powers were represented on the Commission on the League of Nations, three of them by the heads of their delegations, Wilson, Orlando and Makino.

CHAPTER XXI

TENTH MEETING OF THE COMMISSION

THE afternoon meeting of the Commission, its Tenth Meeting, with Cecil in the chair, began with a very long debate on the French amendments [1] to Articles 8 and 9; these modified somewhat the earlier French proposals,[2] but still contained the idea of an International General Staff. They were unacceptable and necessarily were voted down, the only concession made by Cecil being the insertion of a few words in Article 9; these made specific reference to the disarmament provision of Article 8 in connection with the duties of the Permanent Military and Naval Commission so that Article 9 read:

> A permanent Commission shall be constituted to advise the League on the execution of the provisions of Article 8 and on military and naval questions generally.

Nothing very new was said during a long and tiresome and confused discussion; in the course of it Kramář proposed to go back and amend Article 7 by adding words to the effect that the military terms imposed on Germany should not be affected by her future entry into the League.[3] This proposal was also rejected. The minutes contain the debate at some length; it is, however, more extensively reported in another paper which I have, a translation of a French stenographic report of the speeches of the afternoon in French with notes taken by others of the remarks in English.[4] The debate on these Articles, extracted from that paper, is here inserted:

> The meeting opened at 15h 30.
>
> The Chairman (reads Articles VIII and IX): Article VIII has been changed in such a way that we now agree with the French and Portuguese delegates.

[1] For their text, see p. 260.
[2] See p. 207.
[3] This is generally the effect of the Treaty of Versailles; see, however, Article 164. Germany is now in the League and, with League instead of Allied supervision, the military terms continue; though one may well doubt the permanence of this situation.
[4] Of necessity there must be some lack of accuracy in a record so prepared.

He adds that at the end of the first paragraph, the words "Executive Council" have been substituted for the words "Assembly of Delegates," * * * Answering a question put by Baron Makino, he states that the military and naval commission, though permanent, would be of an entirely provisional nature.

General Smuts proposes to substitute the word "had" for the words "paid in such recommendations" which is found in the second paragraph of the Article. He suggests inserting the words "of war" after the word "munitions" at the end of the second paragraph.

These amendments are adopted.

M. Léon Bourgeois: There are no comments on the beginning of the article.

The article ends thus, I read the French text:

> "The High Contracting Parties agree, moreover * * * of their military and naval programs."

In this paragraph I propose the following amendment:

> "The High Contracting Parties, resolved to afford each other frank and open information on the scope of their armament and their military and naval programs, as well as on the condition of their industries capable of being adapted to warfare, will establish a Commission to obtain the necessary data."

Do you not agree? We did not want to use the word "contrôle" again, because it had given rise to objections; but we were of the opinion, and we still are of the opinion, that, practically speaking, it is not sufficient just to give publicity, since publicity might be dangerous.

M. Epitacio Pessôa: That is just the danger.

M. Léon Bourgeois: It may be absolutely perilous for states to give publicity to preparations that may be quite within the limits and the spirit of the international agreement, and which do not need to be made known to the very persons against whom it may be necessary to exact suitable penalties. Thus we are of the opinion that this formula is a peril on the one hand, and, on the other, a trap.

As to the verification between states of good faith, there is nothing hard about conceiving of one of them saying: "Here is what I am at work on," then they will give some of the necessary data on the work they are doing, and the rest will do the same. We must establish a régime of mutual confidence based on a complete exchange of data among those who are getting ready to execute some common action tomorrow, some action which may be economic, but which may also become military. Thus we are all agreed if we add the following words to the wording of the Commission: "Will establish a commission to obtain the necessary data." It is this idea of a mutual exchange of information,

I do not wish to say "controlled," since the word is forbidden, but verified by each one, which seems to me indispensable if we wish to give reality to the proposed measure.

M. Larnaude: I wish to add one word as an appeal to logic: it seemed to us quite impossible, logically, that the means of control itself, that the means of verification, would verify itself. And it seems a logical arrangement, and a sensible one, if the verification of armaments be made by others than the very persons who make the armaments, and who are actually bringing these constructions into existence. That is the idea that lies at the bottom of our amendment. It is not possible, logically—and this seems to us something besides a question of pure, abstract, and formal logic—that states be left to the discretion of the good faith that we suppose exists in all that concerns the legality of our armament.

We do not conceal from ourselves that this is a considerable modification in the text that was presented. We do not say that there is a right to control, to verify, to inspect; we say that there may be a commission to obtain the data made necessary by the manufacture of munitions which may be concealed.

M. Léon Bourgeois: We are forced to look ahead to the time when the Society will extend to others than those who are to be its immediate members. The good faith that reigns among us, will it always reign among the other states that little by little will join the national organization?

M. Larnaude: They can sign a unilateral promise.

M. Léon Bourgeois: The idea of promises gives the idea of an exchange of information, and we wish to consider this necessary without injuring the autonomy, the independence, or the dignity of anybody; it is indispensable if we wish the limitation of armaments to be a reality.

Chairman: I believe it is wise to see the extent to which this proposal of the French Delegates would carry us.

Chairman: The French wording is clearer than the English wording in saying clearly that all this information will be exchanged among the Allies.

M. Jayme Batalha Reis: That is true.

M. Larnaude: But we still believe that is not sufficient simply to say that the High Contracting Parties agree not to conceal anything from each other, because this seems to us contrary to the very idea that is at the bottom of this control, this verification. We suspect no one. We repeat what M. Léon Bourgeois said. Namely, this verification does not seem to us, to us French, who are nevertheless regarded as very sensitive, does not seem to us a violation of our dignity. There is just one thing. If the commission is not of our opinion, let it say so; but we desire a vote on our amendment as it stands.

M. Léon Bourgeois: We have the highest regard and admiration for the commission on all its work in the other parts of the article.

Chairman: Yesterday the Drafting Committee examined all the French amendments. We adopted almost all of them. I beg my French colleagues not to insist further.

As to this question of verification, it is impossible without legislation; and I assure you that Parliament will never pass the legislation necessary to make it effective.

This is not very encouraging.

M. Léon Bourgeois: Mr. Chairman, we act here as each of us believes he should act. Please note that we are in a somewhat delicate situation, for we are always in the position of discussing a text that was never our own. We can act only by amending the text proposed by the Chair, and that gives our interruptions an aspect that I truly regret. If we had only had the French proposals on the one hand, and on the other the English and American, both side by side, we should have been able to compare the two texts; but, since we have before our eyes but the one text, which represents one of the two sides, an opinion that is entirely respectable and as such respected by us, we can intervene only by means of amendments. We do so with full liberty, since it is our duty to do so, and our right; we do so in a way and in a feeling that should not be such as to disturb the union that must exist between us. If we did not call attention to the points that justify our apprehensions, we should fail of our duty. Now, what we apprehend is the publicity that has been arranged for, in that it seems to us dangerous. That is why we insist that the commission be consulted regarding our text.

M. Diamandy: It is necessary that the exchange of information between the contracting parties be obligatory, and be carried out in good faith.

M. Larnaude: We are obliged to take into consideration, as in that famous marriage contract where the question is always one of the death of one of the espoused, we are obliged to take into consideration that some time something will be concealed. How are you going to force a person who wishes to conceal something, to exchange information? We have only one means of knowing what he is doing or what his neighbor is doing, and that is to establish a commission to obtain the necessary data; after that we must ascertain what the results of this data are.

M. Kramář: I feel, and I say so frankly, like the French delegates, certain apprehension in this respect: the day that Germany is admitted into the Society we shall be obliged to depend on the good faith of Germany, and I believe I am not alone in having no confidence in such "good faith." I am convinced that the

French have no more confidence than I have. Between Allies, the control is not necessary; the Allies have no reason to conceal anything at all from each other, but one must be on the watch against Germany. I imagine that the peace treaty will contain special conditions regarding Germany, as to its manufacture of munitions, as to its armament, as to the importance of its standing army, and as to its control.

Chairman: I imagine so too.

M. Kramář: I know the Germans well, and I know that one can have no confidence in them. Already they are undertaking a campaign in their papers against the establishing of special conditions regarding them.

M. Venizelos: I accept the amendment of M. Bourgeois, but we are face to face with internal difficulties; and I think it is the place to fill a want that seems to me dangerous.

Article VII, which we have voted to adopt, provides the establishing of a control not as regards ourselves, but as regards our enemies, and we look ahead to the day when we shall say to Germany on her demand to be admitted to the Society: "We should be glad to admit you, but we want the right to control your armament."

I shall go further. The compact that we are voting on does not exclude the possibility for the Society of Nations, if it believes seriously that its provisions are being violated, to address itself directly to the party committing the violation, and warning it.

M. Larnaude: M. Venizelos knows the treaty better perhaps than anyone else, and he has here brought in an idea of jurisprudence, that when a principle has been framed, it is not necessary to develop all its details; they will develop themselves. M. Venizelos says: There is an Article, Article VII, which is sufficiently general.

M. Venizelos: No. It is special, concerning Germany. It aims at the states against whom we make war.

M. Larnaude: It is general in the sense that it aims not alone at the limitation of the manufacture of armaments; it aims at everything.

M. Venizelos: It aims at "military and naval armaments."

M. Larnaude: That does not include manufactures, nor the control of manufactures.

M. Venizelos: The Article aims at Germany.

M. Larnaude: It aims at Germany in connection with its admission, but once Germany is admitted?

M. Venizelos: We shall impose on Germany as a condition of admission the right of control.

M. Larnaude: I was saying that M. Venizelos' argument was an excellent argument in the sense that in all that concerns the

general state, we have some leverage. We admit that, but we think, in regard to this so important question, which we consider vital, of the limitation of military force, of the inspection of industries capable of being adapted to warfare, it is necessary to have a special provision. *Quod abundat non viciat.* From the moment that doubt exists, we ask that a special clause be inserted in the text.

M. Venizelos: I am quite ready to adopt this amendment.

M. Léon Bourgeois: I understand M. Venizelos perfectly; I know the difficulties that certain of us may meet in the political organization of our countries. We are endeavoring to reduce them to a minimum. But it seems to me impossible not to satisfy the fears of M. Kramář, and this is why. In an association, there cannot be checks and balances. When one enters into an association, all associates must have the same fulness of rights. You cannot say that good faith will be presumed in certain members of the Society, and that there shall be no control over them, while certain other members will be presumed guilty of bad faith, and over them there must be control. As regards those who will enter the Society later on, we shall impose severe conditions of admission on them by the treaty of peace, especially, as regards the control of their armaments; but once they are admitted to the Society, you cannot maintain special and severe conditions regarding them, which, after all, place them in a position of inferiority, so that they would have a right to complain.

Up to the treaty of peace, we shall make them submit to all the conditions we deem necessary, but the day that our past is liquidated, they may begin again. I do not adopt a special, French point of view in saying this; I contemplate a point of view that is universal, and that is the interest of the Society; and I am of the opinion that it is unwise to relieve those who some day will demand admission to the Society on an equal footing with all the world, from giving these indispensable guarantees in support of their declarations.

I wish to add that I did not speak of a commission that would go round to these countries to do its verifying. We can leave to one side the form under which this verification will be carried out; this we leave to the arrangements of the international committee; we do not prescribe any form; we do not use the word "inspection"; we avoid the word "control"; we ask only for proof that the declarations are made in the general interest of the Society. On grounds of independence and of dignity, certain countries do not wish to have commissions visiting them, but we are obliged to foresee that certain states, even those that are in the Society, may fail in their agreements; if that were not the case, we would not have to make provisions against those who violate the compact. We all have good faith, but there may be some

country who fails in the compact, whether it violates an article of the compact, or conceals its preparations. In what way do the steps that we have taken infringe on the independence of the one or the other of them? We have accepted these steps in order to have a minimum of guarantees, for it is indispensable that some verification be made. I shall not discuss this matter further.

Colonel House: I am in accord with M. Bourgeois's proposal; but we are in the same position as are the British delegates. We pursued this course as far as possible yesterday.

M. Kramář: I repeat that there is no necessity for a control for the Allies, but it must be provided for Germany.

The President: In the interests of the discussion, it will be better not to consider more than one amendment at a time, and I request M. Kramář not to bring up his amendment until after that of the French delegates shall have been taken into consideration.

M. Kramář: I propose that the following words be added to the Article: "Nevertheless, special conditions affecting military and naval forces, imposed by the Treaty of Peace upon any State, shall not be affected by its admission to the League." If my amendment is accepted in principle, that of M. Bourgeois is no longer necessary. For my part, I am obliged to vote in favor of M. Bourgeois' amendment. It is essential that all conditions of admission be determined in advance, so that there may be no complaint.

M. Vesnitch: I should state that I am obliged to vote in favor of the wording adopted yesterday. By the wording of Articles 8 and 9, the Committee has gratified the wish of the French, since we have established aside from the executive council a permanent commission to advise it. This permanent commission is absolutely indicated for furnishing information to the executive council. If the council is notified that something contrary to the clauses of the Society is going on in some country, the executive council will take measures.

I wish to state in closing that I especially desire to avoid complicating the institutions which we are about to create. We have already established a military and naval commission, and I wonder if that is quite practical. I beg the representatives of France to consider that Article 9 gives them all the guarantees that they can (desire). (Word apparently omitted: Trans.)

The President: All the military headquarters of Europe knew what Germany was doing. Nevertheless, it is not to be expected that the League of Nations will inaugurate such a complete intelligence system as most of our War Offices. They are highly skilled organizations; and to set up a similar body under the ægis of the League of Nations would induce a false sense of security.

M. Larnaude: I had already heard it said that before the war every nation collected information as to what the other nations were doing, and that this will continue to take place after the war, and that under these conditions it is useless to establish an official organ for this purpose, since governments will always have their own informers. In this connection, I am forced to cite an example of fact which is serious.

When we were at our frontier, our headquarters staff believed that there was a certain number of German divisions and army corps. Now it was found at the battle of Charleroi that this number was exceeded by thirty divisions.

The President: Do you think that the Society of Nations would have done better?

M. Larnaude: Yes, because it would have had certain powers.

The President: What powers?

M. Larnaude: We were surprised at Charleroi by a number of divisions which we could not foresee, which no one could foresee, with the result that we were overwhelmed by the number. This gives the French food for thought.

I wish now to reply to certain remarks made by M. Vesnitch or by Lord Robert Cecil.

I have always withheld, I recall to you, the opinion of my government on the two questions, that of concealing nothing and that of the permanent army, which was abandoned in favor of a commission provided for under Article 9. I act only for my government. We distinguish two things: the limitation of armaments and of manufactures. We should like to know whether all nations really agree with this idea. In this matter we have the greatest confidence in the nations; but we must foresee that someone will not conform to it, otherwise there would be no necessity for the existence of the penal code. A nation with evil intention certainly can fail to meet its obligations. We want to have such a contingency foreseen and to have measures taken. That is the purpose of the amendment which we propose.

M. Léon Bourgeois: We seek to decrease the risk of war.

The President: Certainly.

M. Léon Bourgeois: Now if you do not establish a control—I don't use the word in the sense which shocks you—if you do not establish an inspection, if you let nations organize in silence and in secret unknown forces or war measures, which will rapidly develop; then in place of decreasing the risk of war, on the contrary you encourage war. If, on the other hand, there is supervision, if there is an efficient brake, you discourage attempts at war and there will be less inclination to be, as the Indians say, on the war-path. Morally, then, the establishment of this investigation is an excellent thing.

M. Kramář: If my amendment is adopted, I shall vote against control for the Allies.

M. Larnaude: We want to have all nations subjected to this requirement. We do not want to have a possibility of subterfuge, or any temptation for a nation to conceal anything. That is why our amendment is not to be confused with that of M. Kramář.

M. Diamandy: The principle of supervision is just, but its application is impossible.

M. Léon Bourgeois: Public opinion in France is unanimous in demanding supervision.

The President: Is it really conceivable that the League of Nations will have an intelligence system supervising the conduct of the world?

M. Léon Bourgeois: In an international convention there cannot be two sets of weights and two measures. If I thought that I could accept M. Kramář's proposition, even though it should not conform to our ideas, I should accept it.

M. Larnaude: There is a difference between M. Kramář's amendment and ours. For that reason I ask for a vote on each of them.

The President: By way of making a conciliation, I propose the following text:

> "A permanent Commission will be established to give the League its opinion on the execution of the stipulations of Article 8 and in general on military and naval questions."

This version expressly imposes on the Commission the duty of insuring the execution of Article 9 [8]. This is neither investigation, nor is it supervision.

M. Léon Bourgeois: In short, you propose to unite the two commissions into one. It would be as one commission with the two purposes. It is a simplification, but we must know what are to be the powers of this commission. As to the matter of armaments, Lord Robert Cecil does not give more powers to this commission than does the text. It has thus achieved the union of commissions; but as it does not increase their powers, this amendment does not satisfy him.

The President: I put to vote the amendment proposed by the French delegates.

This amendment, put to a vote, is rejected by 12 votes against 3. Those who voted in its favor: MM. Léon Bourgeois, F. Larnaude and Kramář.

The President: I put to vote Article 9 [8]. I wish to call attention to the fact that the drafting committee has thought best to substitute the words "full and frank interchange of information" for "publicity."

Article 9,[1] amended according to the proposal of the President, and put to vote, is adopted.

The President: We come back now to Article 7, with which M. Kramář's amendment deals. (See below.)

M. Rolin Jaequemyns: M. Léon Bourgeois quite rightly called our attention a moment ago to the fact that there can be different reasons for the admission of nations into the League. Don't you think that when a new member is admitted into the League he will be admitted under conditions of inequality; and I fear that this would be contrary to the principle which must be considered as sacred in this connection, and I fear also that that would constitute an actual vice from the point of view of the operation of the League. When one can admit an undesirable member only under certain conditions, I should think that it would be better not to admit him at all. Otherwise, one would run the risk of disturbing the harmony.

M. Larnaude: Then you propose a *capitis diminutio.*

The President: Admission to the League will not affect the obligation of other treaties.

General Smuts: This Covenant will be a part of the Treaty of Peace, and there can not be inconsistency between its parts.

M. Kramář: I understand the logic of the French mind, which desires absolute equality for everyone. The Germans are beginning to clamor for admission into the League, and it is my opinion that within a certain time you will not have the strength to refuse their admission, precisely in the name of justice and equality. Once they are admitted into the League, they will say that it is impossible that all nations should not be treated on the same footing of equality, and they will be free from control because we don't wish to have control for ourselves. I can't see why the French don't see this.

M. Léon Bourgeois: But we do ask for control.

M. Larnaude: We have requested it.

M. Kramář: There is no necessity of a control for the Allies, but there must absolutely be a control for the Germans.

M. Larnaude: My amendment differs from yours in this; that we are obliged, as in every convention, to make plans against the bad faith of all.

M. Rolin Jaequemyns: For my part I share, and I am sure that the whole Belgian nation shares, M. Kramář's distrust of the shrewdness of the Germans. Our distrust is such that, according to our way of looking at it, all these precautions will be of no avail as long as the state of mind of the nation of whom we are speaking shall not be considered to have changed. The essential precaution to take consists in not admitting her and in not offering

[1] Error for 8.

her indirect means of working her way into the League so that, once a member of the League, she might not be able to say, "This is my house just as much as it is yours, and I want to be treated on the same footing as you." Now that is just what I do not want.

The President: Here is the text of the amendment:

"However, special conditions concerning naval and military forces, armaments, and their control, imposed by the Treaty of Peace on any nation, shall not be affected by admission to the League."

Senator Scialoja: One cannot accept the amendment without being convinced of the contrary principle, namely that on entering the League one is freed of all preceding obligations.

M. Larnaude: This reservation can figure in the official report (*procès-verbal*).

The President: I put to vote the amendment of M. Kramář.

(The amendment, put to vote, is rejected.)

M. Léon Bourgeois: We have distributed an amendment worded as follows:

"An organism * * *" [1]

We thank the Commission for having translated the idea of the permanent Commission into this text. This amendment has the object of fixing the powers of the permanent Commission, the object of its labors, and the limits of its duties.

The President: The French proposal looks toward the establishment of an international general staff, considering military and naval questions and the way in which they can best be given effect. You cannot look at the League of Nations as an advance against Germany. Nothing would more militate against peace. Nor would any country permit an international staff to know and interfere with its own military and naval plans so long as they consist with the policy of the League of Nations.

M. Léon Bourgeois: We may consider our amendment as modifying Article 9. That would be simpler.

The President: Yes.

M. Larnaude: The Commission has improved the wording of Article 9, but it is to give it greater precision that the French delegates have taken care to draw up a special article.

M. Léon Bourgeois: The object of the amendment is as follows:

We expressed yesterday the concern caused to us by the risk of sudden aggressions, and we insisted upon the necessity of having certainly and constantly not only an international army, but national contingents of the different associated nations ready to act because if we wait until concerted action be established be-

[1] For the French text, see p. 260.

tween the various military authorities of the different countries to determine the place to which the international forces shall be sent, the figure of the associated contingents, and the methods which must be followed in the military operation, it is certain that very much time will elapse before the associated contingents become effective. We have therefore called to mind the situation on our own frontier as well as that of other countries, a situation which is as delicate as our own. And we have stated that it is not sufficient to wait until each of the associated countries is ready to come to the aid of the attacked nation, because as happened in 1914, it is possible that a considerable part of the territories or that a whole region, as happened to our Belgian Allies, be invaded and devastated before the international force might intervene effectively. Is it prudent? Is it wise? Must not certain eventualities be prepared against? Must not the existence of a permanent organization, which I will not define, and which I do not call a general staff, but a permanent organism charged with anticipating and preparing the military and naval means for the execution of the obligations imposed by the present convention on the contracting parties, be considered and provided? This organism must be able to keep up a continual correspondence with the different countries and to call the attention of all of them to what it is necessary to provide and prepare, so that, if the menace becomes certain, and if the aggression actually occurred, no time will be lost, and all will be done which shall be necessary to block the aggression. This is our concern. We have set it forth with special emphasis. What we wish is that this permanent organization in all cases insure the immediate effectiveness of a military action.

As you see, we have not pronounced the words "International Army," and we have not mentioned "General Staff," we have been careful not to use the expression "International Command." We have said only:

> "Permanent organism for study and preparation which shall have the special mandate of insuring the effectiveness of the defense in case of aggression."

M. Larnaude: Article 10[1] is very different from the ending of Article 9, which is proposed to you by the committee which met yesterday morning and afternoon at Lord Robert Cecil's.

Article 9 *in fine* provides a permanent commission, it is true, which must give its opinion on military and naval questions. This is extremely vague and lacks precision woefully; on the other hand, our article may seem to you entirely different. In fact, it is different. However, I take the liberty of observing that this article will seem very modest to you when I shall have called your at-

[1] Meaning here the French proposed amendment to Article 9, quoted at p. 260, which is here envisaged as a separate article.

tention to the fact that at first we requested an international army. This word has, I believe, greatly excited the journalists and all who are dealing with this question.

M. Léon Bourgeois: We have made no motions for the creation of an international army.

M. Larnaude: No, but we insisted on this point. It was not a question of an army in the legal sense of the word. It was a question simply of the levy of certain contingents in each nation which in case of extreme necessity would form an army which could be transported rapidly to the aid of the threatened country. The organism which we would provide is very modest, beside that which M. Bourgeois and I requested at the preceding sitting. This question has been brought up at several sittings. At the very first, I stated the special situation of France and certain other countries. I said that there is such a danger existing for her and for the others that it would be necessary to provide something special in this regard. Our amendment goes further than Article 9 *in fine* and the project of the Commission does not go nearly so far as the projects for an international army constituted from elements taken from each country. We propose our amendment as a happy medium. I would remind Lord Robert Cecil, and MM. Venizelos and Vesnitch who were with me in the committee for final wording, that I did not accept Article 10.[1] I stated that I would reserve the right of discussion; and we thought that we could substitute the new article 10 [2] for it.

The President: I propose that an international staff be created to study and prepare the necessary military and naval measures in case of aggression. (?)

M. Larnaude: I was a little alarmed a moment ago when Lord Robert Cecil told us that it would be necessary to make plans for the invasion of all the countries in the world which might revolt. That reminds one too much of the plans of the German General Staff which it appears had plans for the invasion of every country in the world. That is what the German General Staff was working at; I believe that that would be making of the proposition which we have the honor to submit to you, I won't say a caricature, I have too much respect for Lord Robert Cecil to use that expression, but it nevertheless expresses my thought. I will content myself with saying that it is an exaggeration. We must not forget that we have always admitted that there are parts of the world which are in such a situation and so surrounded with peoples that they run greater risks than other countries. If we make plans, I think they will be fairly restricted in number.

Moreover, notice that in a number of your articles you pro-

[1] Error for 9.
[2] i.e. the French amendment. See note, p. 254.

vide that it will be the duty of the Executive Council to keep a strict watch over what is going on in the world, of seeking out possible causes of war in this or that country and of supervising any quarrels which demand attention. When I say that attention will be paid, I do not mean that we will limit ourselves to lending an ear; we will give attention by making a certain little plan, and I think that when the disputing countries know that armed forces are ready to intervene at once, calm will soon be reestablished. In any case that prospect will be efficacious.

One of the conditions necessary for the League of Nations to be able to impose peace, is that the whole world know that she has the means to impose it and to impose it at once. There is no other way to enforce peace but by force intelligently placed at the disposal of the League of Nations.

These are all the arguments which I would add to those advanced by M. Léon Bourgeois. Once more I declare that even if you reject our motion, we shall none the less remain good friends, and we shall none the less continue our participation in the common work. However, we desire that our reservation be mentioned.

The President: I understand your attitude.

M. Larnaude: No nation more than France desires to see a League of Nations founded, for it must be remembered it is she who first conceived the idea, and the initiative should be credited to M. Léon Bourgeois, of a League of Nations founded upon right. But right is nothing if it is not backed by force; force is not legitimate when it has not a just aim. Unfortunately, as Pascal has said, right by itself can do nothing but enhance great injustices.

"Victrix causa Diis placuit, sed victa Catoni."

M. Vesnitch: I beg M. Léon Bourgeois, who well knows the respect I have for him, to consider the measure which has been provided and amended by Lord Robert Cecil, and which is worded thus:

> "A permanent commission is to be formed which shall see to the execution of Article 8 and shall advise the League on military and naval matters."

M. Léon Bourgeois: In our text there is no "which shall see to."

The President: The text says: "Shall advise" the League.

M. Vesnitch: What does "advise" mean? It is the same thing: to advise regarding the application of Article 8 is to verify the application.

I find that the French wording presents a danger. It constitutes a sign of distrust in the League of Nations, and I desire that in the Constitution of the League, a statute which will be

read by the public, this sign be omitted. I believe that Article 9 and the amendment by Lord Robert Cecil are sufficient. What the governments upon instructions of the Executive Council and of the League of Nations tell us to do will be done. In this Council the French Government as well as the American and the English government, will be able to make all suggestions which they shall deem fit.

M. Léon Bourgeois: I am happy to answer M. Vesnitch and say that he knows my friendship for him. Our article, and I must beg his pardon for saying so, neither behind it nor in its form contains the dangers which he fears. It has not so great a range as he ascribes to it. It is the actual application of Article 9.

We say: "In case of aggression, menace or danger of aggression, (I thank the Commission for having added the words, or danger of aggression) the Executive Council will see to the measures suitable for insuring execution of these obligations"

If the Executive Committee charged with insuring the execution of these obligations has not at its disposal an organ to study, watch over, and provide, what do you think it ought to do? The Executive Committee is not made up of soldiers. Consequently, we shall tend toward a Commission made up of military men; and if it does not keep itself thoroughly informed of all that goes on in the world and of the menace which may arise, and if it does not provide the means which must be used to parry this danger, we shall be taken by surprise. It will be necessary for the governments to take a proper interest. This Commission will give an opinion and will make known all that is necessary to know in anticipation of a possible operation. Here it is our organism which will be operating. We must say so frankly; all the more so, because it is better to be clear and direct and not to recoil before the necessity of stating something which is indispensable.

It will either have the powers which we desire to confer upon it, and I must say so frankly; or, it will not have these powers, and in that case, it will be of no use whatever.

M. Vesnitch says, "You speak in such a way that one would think you are talking war." Of course: "Si vis pacem, para bellum." If you want peace prepare for war.

The President: What you desire then is to insure the effectiveness of the measures taken.

M. Larnaude: Lord Robert Cecil has expressed our thought very well.

M. Léon Bourgeois: If no preparations are made we shall be taken by surprise. You have seen what the war has demonstrated; before we were able to bring about unity of front, we lost a great deal of time, wasted a great deal of courage, of will power, of enthusiasm, of energy, and of boldness. From the day on which

we created a united front and insured unity of action we obtained decisive results. Since you are obliged to provide in your convention that for certain eventualities military penalties shall be inflicted, and since you are obliged to provide for the threat of aggression, and aggression with violation of the stipulated time limits, in the case of the outbreak of war, before the three months, we should commit a great imprudence if we did not take the necessary measures to arrest the aggression. Recent events which have occurred in the world show us that we must be prudent. It is therefore an appeal to prudence which I submit to you, and I am convinced that public opinion will thoroughly appreciate what we are trying to do.

M. Hymans: I am not much impressed by the fears expressed by M. Vesnitch as regards the marks of distrust in a Society of Nations. Without using the word distrust, I find that it is but legitimate at least to seek for guarantees; this certainly can hurt the feelings of no one. No one will imagine in reading over our draft that this draft completely eliminates the danger of war. And from the moment when the public knows that wars remain possible it will find it quite legitimate to seek for all necessary measures to the end that in case war should break out all danger may be met.

It seems to me that M. Larnaude has compromised the fate of his amendment in trying to bring out the difference between him and Lord Robert Cecil.

M. Larnaude. I am trying above all to act in good faith.

M. Hymans: If the word "prepare" means the right to impose obligations on states, intervening in the internal affairs of states, then I should say that in the name of the sovereignty of these states we say, "No, we do not wish that anyone intermeddle in our affairs."

Chairman: The text also says "to insure its efficacy."

M. Hymans: I see. I see a permanent commission established to advise the League on the execution of the obligations of Article 8, a commission which, in fact, is going to do exactly the same thing as what we propose to have the permanent council do.

Chairman: It is altogether different.

M. Hymans: A slight change would be necessary. Instead of: "to prepare" put, "to study and provide for."

M. Larnaude: The word "to prepare" is essential.

Chairman: There is a real difference of opinion between M. Larnaude's attitude and mine, and it is impossible to suggest words of compromise.

M. Hymans: I give up the role of conciliator. As the representative of a small nation, which, on account of its geographical situation, is interested in having the greatest guaranty, I do not

give my opinion on the question of international forces; but I declare myself, and I am, a supporter of all measures to increase guaranties in case a conflict should be about to break out.

Chairman: We have done all we could not to frighten the public opinion of our respective countries.

M. Larnaude: Lord Robert, we pay homage to all you have done.

Chairman: I understand very well the idea of the French; but, if we try to do too much, we shall accomplish nothing.

M. Léon Bourgeois: Lord Robert Cecil said that he had gone as far as public opinion of his country would support him. We also have gone as far as public opinion can agree. Public opinion must find security in the project. If there is nothing in the Convention to give this assurance, it will not support the Society of Nations and we shall find ourselves in a difficult situation.

M. Larnaude: We want to pay homage to the wonderful spirit of conciliation shown by Lord Robert Cecil who found the way with an ingenuity which I admire, although I am in the habit of writing texts, to present immediately an amendment expressing our idea.

M. Diamandy: I would like to conciliate the opponents.

Chairman: Beyond a certain limit, conciliation becomes a trap.

M. Larnaude: We must play open and above board. Lord Robert Cecil has admirably understood our amendment and has commented upon it remarkably but he went too far. We must be clear, above all. We presented to you the opinion of the French delegation. There remains nothing to do but vote on it. If we are defeated, we shall accept it and remain friends, nevertheless.

Chairman: I put to the vote the amendment presented by MM. Léon Bourgeois and Larnaude.

The amendment is defeated.

Neither report of this afternoon meeting of February 13, however, is complete; and the verbal amendments proposed by Smuts and accepted are not stated with entire accuracy. What they did was this: the Portuguese amendment[1] added to the second paragraph of the disarmament article (Article 8) the following language:

> due regard being paid in such recommendations to the necessities of those countries which are not able to manufacture for themselves munitions necessary for their safety.

[1] This Portuguese amendment is printed in parenthesis in the text of the Covenant from the Drafting Committee (Annex 2 to the English minutes of the Ninth Meeting.)

With the changes of General Smuts the Commission accepted this amendment so that it read thus:

> due regard being had to the necessities of those countries which are not able to manufacture for themselves the munitions and implements of war necessary for their safety.

The other change made in the Article was in the third paragraph, the substitution of the words "interchange of information" for "publicity."

The English minutes are quite obscure regarding the French amendment to Article 8, which they say was rejected by a vote of twelve to three;[1] but they do not give the text of that amendment, an English version of which is in the report quoted above; as appears from the French minutes,[2] it was as follows:

> Les Hautes Parties Contractantes résolues à se donner franche et pleine connaissance mutuelle de l'échelle de leurs armements et de leurs programmes militaires et navals, ainsi que des conditions de leurs industries susceptibles de s'adapter à la guerre, institueront une commission chargée des constatations nécessaires.

Furthermore what the French proposed for Article 9 is set out in translation in the English minutes; as the French minutes [2] show, the proposal read thus;

> Un organisme permanent sera constitué pour prévoir et préparer les moyens militaires et navals d'exécution des obligations que la présente Convention impose aux Hautes Parties Contractantes et pour en assurer l'efficacité immédiate dans tous les cas d'urgence.

In connection with some of the remaining Articles of the draft there was a good deal of talk, much of which was to very little purpose. Bourgeois went back to the Preamble and again referred to the Hague Conferences at length; he even made reserves regarding the Mandates Article, which Clemenceau, the head of his own Government, had in substance approved at the Council of Ten. The only result of such tactics was to test the patience of the other members of the Commission and to throw a very favorable light upon the tact of Cecil as presiding officer.

[1] Bourgeois, Larnaude and Kramář.
[2] Annex I.

Two drafting changes were made during the discussion. A reference to Article 12 was inserted in the last sentence of Article 15; and in Article 16 the words, "so far as possible" were stricken out. But, except regarding the "religious" Article, there were no other alterations in the text from the Drafting Committee. I insert here the discussion as it appears in the report above mentioned,[1] omitting the portion relating to the "religious" Article:

Chairman: I put to the vote Article 10.
Article 10 is adopted.
Article 11 is put to the vote and adopted.
Article 12 is put to the vote and adopted.
Article 13 is put to the vote and adopted.

M. Léon Bourgeois: I renew my very strong protest against the preamble. I consider it a serious matter to ignore completely, as if nothing had ever been done up to the present time for the organization of international law, what has been done and elaborated at The Hague in 1899 and 1907.

I recalled in a preceding meeting that the work done at The Hague had not been done in vain as the opponents of Right have claimed. They are the ones who have piled up jokes and raillery on the work done at The Hague; they have tried to cast discredit on the first great enterprise for the organization of right in the world, by their criticisms and raillery they succeeded in affecting the minds of those who ought to have been the staunchest upholders of the work of The Hague.

I foresee, I announce and I want it to be written in the minutes that, against the work we are now undertaking, the same criticisms and the same raillery will be made, and that they will even try to say that this work is useless and ineffective. As for me, I am proud to have been with a few of those who are here, among the workers at The Hague; I am proud of having been there intimately associated with representatives of the United States of America, of Great Britain, and of most of the large free countries. We were 32 faithful free countries, having the sentiments of right. On three or four occasions, international acts of the greatest importance, due to the international organization of The Hague, have occurred. I recalled that cases of arbitration have taken place, without war, between great powers like Russia and England in the Dogger Bank incident, between France and Germany in the incident of the Casablanca deserters, between France and Italy in the Carthage and Manouba affairs.

These great powers were very happy, thanks to the international organization of The Hague Tribunal, and the system of

[1] See p. 243 *sq.*

inquiries of The Hague Tribunal, to find measures to get out of trouble and to be reconciled immediately, to get close together in a cordial union. The Hague Tribunal safeguarded the dignity and honor of the nations which is generally the most dangerous of war menaces.

I think, therefore, that it is regrettable that no mention should be made of what The Hague Tribunal has done, in the preamble of this Covenant, and I ask that the preamble be completed as far as that is concerned.

M. Jayme Batalha Reis: I agree fully with what has just been said by M. Léon Bourgeois.

M. Larnaude: In all wars account has been taken not only of the principles of International laws as established by centuries, but also of The Hague Tribunal. It has been said that in such and such circumstances, Germany had violated the convention of 1899-1907. Not to mention The Hague Conference is not only ingratitude, but it is something more, it may be a disregard of the interest we have, not to deviate from the conventions which have truly played a part in this war.

M. Léon Bourgeois: You are going to pronounce sentences—you will do so according to The Hague Conference.

Chairman: Nobody thinks of forgetting the work of The Hague Conference, it is a simple question of form, not an important matter.

M. Léon Bourgeois: To my mind it is a vital matter. All the States represented here have the right to consider the institutions of The Hague as non-existent and to wish to create something new; they may want to ignore The Hague institutions in order to express their will to substitute something new. It is a system. However, we were not told in the beginning that we should go so far. We had thought that The Hague Tribunal of arbitrations should find its natural place in the scheme of decisions to conciliate and solve the conflicts arising between States.

One is careful to say "the executive council shall decide * * * international."

Chairman: We are coming to it.

M. Léon Bourgeois: I am referring to the idea of creating a permanent court of justice, which seems to imply the idea of abolishing the existing court of Arbitration.

M. Venizelos Is there really a permanent court of justice at The Hague? I was told there was none.

M. Léon Bourgeois: I have the honor of being one of the members.

M. Venizelos: I was given to understand that there was a framework in which one could place such a permanent court.

M. Léon Bourgeois: It was attempted to create a special court

of justice; we did not succeed. The permanent court of The Hague is a list from which are selected the arbitrators needed; the whole procedure is organized. There is a series of articles to determine the functioning of this Court.

M. Venizelos: Then it is not permanent and that is why we wish to constitute a real "permanent court."

Chairman: So far as English and American opinion is concerned, there is no intention to discredit the work of The Hague, and no reflection upon its achievements intended to be carried by our unwillingness to include reference to it in the Covenant.

Colonel House: Although I respect the Court of Arbitration of The Hague, however the United States and other countries have ratified The Hague Convention with some exceptions which would lead us to vast and very difficult questions.

M. Léon Bourgeois: I remind you that the International Commission of Inquiry which functioned in the Dogger Bank affair, was instituted and organized according to the procedure proposed by the delegates of the United States of America. They introduced at The Hague the project of organization of international inquiries and that raised no objections in the United States.

I am not asking now for the least approval of what has been done at The Hague. I only say that there are international institutions which are called: The Hague Institutions, Permanent Tribunals, or whatever you please. We should continue to call upon these organizations.

Chairman: That is the very thing to do.

M. Léon Bourgeois: Where? I assure you that I am not wasting my time, for I shall renew the protest I am making.

M. Epitacio Pessôa: Must the Council prepare plans and submit them to the Assembly of Delegates? That point ought to be cleared up.

M. Larnaude: Plan does not mean judicial text.

M. Epitacio Pessôa: It should be known who is going to approve these plans.

M. Larnaude: The governments will.

Chairman: There are no further remarks on Article 14? I put it to vote.

Article 14 is adopted.

As proposed by Mr. Koo the words "and of Article 12" are added after the word "article," 2nd line at the end of the article.

Article 15 put to vote is adopted.

Chairman: M. Larnaude has the floor on Article 16.

M. Larnaude: Considering the seriousness of the sentences contemplated I ask that the words "as large as possible" be struck out.

Chairman: There is no objection. The words are ordered to be struck out.

Baron Makino: Is it the intention of this article to provide for the suppression of private relations?

Chairman: Our experience with the blockade has demonstrated the necessity of putting an end to all kinds of relations.

Mr. Koo: Is it anticipated that each state will declare war on its own initiative against an aggression?

Chairman: Contiguous states will immediately act on their own initiative. The Executive Council will by its decisions dispose of the hesitations of the other States.

Chairman: Article 16 will now be put to vote.

Article 16 is put to vote and adopted.

Chairman: We will now pass to Article 17.

M. Léon Bourgeois: It would be well to have the interpretation of this article indicated in the minutes.

M. Larnaude: We think that this article is not drawn up very symmetrically. I think that it should be accompanied by a very precise commentary.

M. Léon Bourgeois: There is an omission which must be supplied in one way or another. We must consider not only Article 10, but also Articles 11 and 13, concerning the infliction of punishment in case of a unanimous vote. Our convention has this peculiar character, that penalties which are considered necessary in the case provided for in Article 10 and in case of a unanimous vote on the part of the Executive Council, are not considered in the same article as applicable according to the same procedure. This is a discrepancy which should be remedied. I think that the article should be completely changed. I have nothing to suggest in the matter, but I wish to call attention to this omission.

M. Larnaude: As for arbitration, it had been understood that as it was a question of cases in which disobedience was rare, this was not necessary. We will make this article more symmetrical later.

Chairman: Since no one asks for the floor on Article 17, I will put it to vote.

Article 17 is put to vote and adopted.

Article 18 is put to vote and adopted.

It was ordered that the procès-verbal should note that this article refers to those countries (?) which are mentioned in the Draft Arms Traffic Convention.

Chairman: We will now pass to Article 19.

M. Larnaude. That is not within our competence.

M. Hymans: It will be within our competence at the Plenary Session.

M. Léon Bourgeois: I put the question flatly: if the text has

not been settled by the council, we can neither discuss it nor amend it?

Chairman: We can discuss it, but at the Plenary Session.

M. Léon Bourgeois: If we do not ask for modifications, it is because we consider that this text is imperatively imposed on us, if I may say so.

M. Hymans: I wish to ask whether, at the end of the paragraph which considers the South-west African territories, we should not add the safeguards provided at the end of the preceding article, that is, guarantees of equality.

Colonel House: I have been discussing this question for more than a month, and I think that it is unnecessary to discuss it again here.

General Smuts agrees with Colonel House.

M. Léon Bourgeois: I insist on calling attention to the fact that if I do not defend the amendment that I proposed to Article 19, it is because I am not permitted to do so, but I reserve the right to intervene before the conference.

M. Hymans: I cannot understand why one régime is established for certain colonies and another régime for other colonies.

Chairman: Article 19 will now be put to vote.

Article 19 is put to vote and adopted.

Chairman: We now pass to Article 20.

Article 20 is put to vote and adopted.

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Chairman: We now pass to Article 22. M. Pessôa has the floor.

M. Epitacio Pessôa: Article 22 establishes freedom of transit for the commerce of nations members of the League. I take the liberty of observing that contracts concerning the construction and improvement of ports have been signed and that by virtue of these contracts, a duty and tax must be paid on all boats and all merchandise for which the wharves are used. I wish to ask what will be the position of the states that have signed these contracts, after the vote on the project? What will be their position with regard to the concessionnaires? It seems to me that these states can not promise to accord liberty of transit, including exemption from duties and taxes, since they are bound by contracts which permit the concessionnaires to collect these taxes. We might therefore make a reservation in the article concerning contracts now existing.

The Chairman explained that the article merely laid down the general principle that a state, merely because it owned both banks of a river, had no right to close access to other states situated farther up that river. It merely establishes the general principle of freedom of access.

M. Léon Bourgeois: I ask that a commentary be given on the devastated countries.

The other day M. Hymans made some very just remarks on this subject. It is not a question of immediate reparation or reconstruction, but of the commercial future, of the resumption of the commercial and industrial affairs of the devasted countries, a resumption that can not be accomplished unless special measures are taken to allow these countries to rise. It seems to me that the word *devastate* is very vague.

M. Hymans: It is not the appropriate word.

Chairman: There are commissions working on these questions.

M. Larnaude: It is not only a question of reparation, it is a question of what follows reparation.

M. Hymans: What I feared was an interpretation of the article in an exclusive sense.

M. Jayme Batalha Reis: The results of the war are the same for all countries, but on a different scale.

In my country, we have transformed our factories; they can not be compared to the Belgian factories, but after all we have transformed them and they have been deserted by the workmen, so that the centers of commerce have totally disappeared. For lack of boats, we have not been able to ship our products. On one hand, we have ceased to produce; on the other, we have lost our centers of commerce.

M. Vesnitch: And we?

M. Jayme Batalha Reis: On a different scale.

M. Larnaude: Those are questions of reparation.

M. Hymans: All must be free to conclude commercial treaties. I represent a free trade [?] and I claim for it the freedom to make commercial agreements according to its interests.

Chairman: All these matters are absolutely provided for by the text of the article.

M. Léon Bourgeois: I ask that this interpretation be indicated in the report.

Chairman: It is more than clear.

M. Léon Bourgeois: *Equitable* is a vague word.

Chairman: It is what is desired. Article 22 is now put to vote.

Article 22 is put to vote and adopted.

Chairman: We now pass to Article 23.

M. Léon Bourgeois: You take the word *contrôle* in the English sense?

Chairman: Precisely.

Article 23 will now be put to vote.

Article 23 is put to vote and adopted.

Articles 24 and 25 are put to vote and adopted.

Chairman: Article 26.

M. Larnaude: Seeing that the revision of the treaties of states is a considerable labor, which the governments will entrust to jurisconsults charged with the duty of seeing that they do not contain any clauses in contradiction with the present act, it is important that the governments be as soon as possible put in a position to begin this work.

M. Léon Bourgeois: I am struck with the similarity of the objects provided for in Articles 25 and 26. It would have been better to consider these various objects in the same articles. But I do not propose any changes.

Chairman: They are different things.

M. Léon Bourgeois: But they have common parts.

Chairman: Article 26 will now be put to vote.

Article 26 is put to vote and adopted.

Article 27 will now be put to vote.

Article 27 is put to vote and adopted.

Chairman: Gentlemen, the project that we have just adopted will be presented to the Plenary Session tomorrow afternoon, but it will not be voted on.

Article 21 will not be presented.

No one asks for the floor?

The meeting is adjourned.

(The session is adjourned at 19 o'clock.)

The "religious" Article was Article 21 of the text from the Drafting Committee. The minutes (made of course after the event) say that Article 21 was dropped, with a reservation by Colonel House to the effect that President Wilson might raise the question again at the Conference.

A more accurate statement of what took place during the meeting is found in that portion of the report above mentioned which related to the proposed Article 21. I reproduce it here:

Colonel House: I only wish to say that President Wilson strongly desires the inclusion of this article in the text.

M. Larnaude: In the commission, we considered this question, and we agreed with Lord Robert Cecil that, in spite of the great advantage that there would be in proclaiming freedom of conscience and worship, the drafting of these reflections was so difficult that it was better to suppress it. I think that the anxiety shown is for other countries than those which are members of the League. Concerning the present members of the League and even those countries that will be invited to become members of it, I

do not think that there will be any difficulty whatever in this matter, but such serious incidents have occurred in certain parts of Eastern Europe that I understand perfectly President Wilson's anxiety. But this is beside the question, since for the moment we are considering especially countries where freedom of worship is accorded to all. But since President Wilson insists on the insertion of this article, I should be unwilling to demand its abrogation.

M. Jayme Batalha Reis: I lived for six years in Russia, in which the struggle was rather between races than between religions. Persecutions took place between two races: the Slavs and the Israelites. Many Israelites have submitted to baptism and become orthodox. Without wishing to offend the race, from certain points of view this race is inferior and is struggling against a superior race.

Chairman: As President Wilson especially desires the inclusion of this article in the text, and as the commission has agreed to it in principle, I think it cannot very well be omitted.

Baron Makino:[1]

Chairman: This matter has been the subject of long and difficult discussions throughout the world and in the British Empire. It is a question which deserves profound and serious consideration. But since it is essentially a controversial matter, I believe that it would be wiser not to go into an examination of it at this juncture.

M. Wellington Koo: Being without instructions from my government, I beg leave to reserve my opinion.

M. Venizelos: I take the liberty of expressing the opinion that it would be well to suppress the article concerning religious liberty, for it is an extremely delicate question and we run the risk of meeting insurmountable difficulties. I am sure that the League of Nations will rapidly bring us to the result that Baron Makino wishes to attain. For the moment, I propose the suppression of the article, for I think that we should not push matters too rapidly.

M. Jayme Batalha Reis: Seeing that Portugal has a legislation almost like the French, if the article is adopted I express the same reserve in the name of my government as the French delegates.

I suppose that we are discussing the article on religions?

Chairman: No, we are discussing the article on the liberty of races.

M. Larnaude: M. Venizelos has shown the connection between the two.

The Chairman took the opinion of the commission on the article. The commission was of the opinion that it should be struck

[1] The statement read by Baron Makino appears in full in the English minutes of the Tenth Meeting and is here omitted.

out. Colonel House said that he would go and inform President Wilson, and that if the latter wished to raise the matter again, another meeting of the commission would be called. At all events, on the President's behalf, he would reserve the right to raise the matter at the Conference.

My Diary thus states the action taken regarding the "religious" Article:

At the close of the afternoon session the draft with amendments was finally adopted unanimously, subject to Article XXI being reserved to see what the President's wishes were, the meeting being almost unanimous against including it, the only states in favor being Brazil, China and Roumania.

Indeed, my Diary indicates very clearly that Wilson's acquiescence came after the meeting, while the printing of the text was going on as this extract shows:

Subsequently, Colonel House told me that Article XXI was to be omitted by direction of the President, and I so notified Lord Eustace Percy, who said he would tell M. de Lapradelle of the French, who was with him. This was about nine o'clock in the evening. In the meantime I had corrected the proofs and ordered 1,000 copies printed for the next day when the text is to be made public and presented to the Plenary Session of the Conference at 3 P. M.

One contributing cause to the dropping of the "religious" Article was the fact that Baron Makino proposed his "equality" amendment [1] as an addition to the "religious" Article; certainly there was much force in one remark of Baron Makino: "It would seem that matters of religion and race could well go together."

The statement which Baron Makino read on the "equality" question appears in full in the English minutes; but the Japanese amendment was not brought forward to be pressed at this time; it was to come up again. The proposal, however, served a good purpose at the meeting, for it helped to make impossible any article on religious liberty in any form; any such article in the Covenant would have been most dangerous, and perhaps fatal to the League; the subject was never again considered.

[1] For the text of this, see p. 183.

The Commission adjourned at seven o'clock in the evening.[1] A Plenary Session of the Conference was to be held the next day, February 14, at three o'clock, at which the text adopted by the Commission was to be presented. Nothing remained, so far as the English text was concerned, but its printing. This was done under my supervision at the American Printing Office with such expedition that 500 copies were delivered to me at four A. M. on February 14.

This text has been printed many times, for it was to be the subject of comment, debate and criticism all over the world during the next few weeks. In this collection, it will be found as the Annex to the English minutes of the Tenth Meeting in Document 19; its French equivalent,[2] printed by the Quai d'Orsay, is Annex II to the French minutes of the Tenth Meeting in Document 20.

This French text is not a wholly accurate version of the English; the differences in meaning were well known during the discussions in Paris, although of course there was no opportunity even to attempt to correct them during the pressure of the hours immediately following the Tenth Meeting of the Commission. I need not enumerate the discrepancies here; some of them will be apparent upon even a casual reading of the two texts, such as the omission in the French in Article 10 of the word "existing"; and in one case at least the difference in meaning between the French and the English seems to have been due to a printer's error in the French. I refer to the last paragraph of Article 15; the French in the body of the minutes is correct; but as there noted, some words are omitted in the final print, changing the sense.

This draft Covenant, as the Commission on the League of Nations adopted it, was presented to the Plenary Session of the Peace Conference on February 14. Various speeches were made and, particularly as these are to some extent a commentary on the text, I print the (English) Protocol[3] of that meeting as Document 23.

One point as to this Plenary Session should be emphasized; it took no action whatever on the draft of the Covenant submitted to it. All that the Conference did was to receive the text; there is a very common error made in this regard, an error which

[1] So says my Diary. The minutes say 7:45.

[2] See as to this French text p. 223 *sq.*

[3] This word has lately been so widely misused that I mention that its meaning here is *procès-verbal* and nothing else.

is followed, for instance, by Judge de Bustamante, who says [1] that the February 14 draft "was approved by the Conference on the day it was submitted."

That statement is entirely erroneous. No one had the slightest intention that that session of the Conference should approve the text of the draft. As Lord Robert Cecil said to the Commission just before it adjourned on February 13:

> The project that we have just adopted will be presented to the Plenary Session tomorrow afternoon, but it will not be voted on.

It was not voted on, as the Protocol of that Plenary Session shows; on the contrary, it was definitely there stated by M. Clemenceau in closing the meeting that the Report

> had been deposited with the Bureau of the Conference for examination and discussion by all the interested Powers. The date on which the discussion could take place would depend upon the completion of the preliminary examination of the scheme. The Bureau would lose no time in summoning the Conference as soon as it was in a position to bring the Report up for a discussion.

[1] *The World Court,* (1925) p. 89.

CHAPTER XXII

A REPRESENTATIVE ASSEMBLY

One proposal which was rather insistently pressed in some quarters at Paris was the creation of a third kind of League meeting, in addition to the Council and the Assembly. I have called it a proposal for a Representative Assembly because it was so styled in some of the papers which suggested it. It is to be remembered in this connection that what we now call the Assembly was called the "Body of Delegates" in the earlier drafts of the Covenant.

The general idea of a Representative Assembly was that it should be a body composed of members reflecting or representing the various political parties in different countries.

Those who advocated the proposal in some form did so on the ground that it was "liberal" in its tendencies. Governments as such and delegates representing Governments were not very new ideas and accordingly were to be distrusted. Assuming to speak for the supposed progressiveness of youth as against the presumed naturally reactionary tendencies of older persons, they persuaded themselves that a different system of representation by party was required, at least in addition to the official system, if not in substitution for it; and, following the usual fashion of those who do not think things through, they invented a meaningless form of words as descriptive of the result of the proposal, saying that it would bring about a "League of Peoples" rather than a League of Governments.

While the idea of the proposal did not originate in 1919, it is unnecessary here to trace it farther back than the International Labor and Socialist Conference which was held at Berne in the early part of February, 1919. That Conference was composed of Socialistic elements from various countries, but not at all those of the extreme Left.

It strongly favored a League of Nations which "in proportion as Socialism is realized" would "be able to achieve more powerful beneficial results." All permanent armies were to be abolished; any necessary armed force would be under control of

the League; the general régime of the world would be free trade; an international control of world communications (presumably including the Suez and Panama Canals) was to be established; and in the future, at least, the League would control both production and distribution of food stuffs and raw materials; incidentally, the League was to have the power, "after consultation by plebiscite," to modify frontiers.

I have summed up the ideas of the Berne Conference regarding the League of Nations because it is rather interesting at this date to look back and see the wildly impossible proposals that were seriously put forward by a body who honestly believed that they represented a great public sentiment. Of course in fact it would have been extravagant to suppose that such a program could have received any substantial support in any civilized country; one per cent of the electorate, or less, would be a probable figure in the United States for example.

At the Berne Conference the following proposal regarding a League of Nations was made by the delegation of the British Labor Party and accepted:

> Representation in the central organ of the League shall be, not by delegates of the executive branches of the governments of the constituted states, but by delegates from the Parliaments representing all parties therein, ensuring thus, not an alliance of cabinets or governments, but an union of peoples.

One of the personnel of the Department of State, who had been present at the Berne Conference, drafted proposals somewhat along the lines of this resolution; and at his request, on February 9 I revised their phraseology; and he submitted them to Colonel House by February 11, for on that day I told Colonel House that the revised proposal was "hardly practicable."

Officially and in another form, the proposal was put forward to the Drafting Committee of the Commission of the League of Nations, on February 12. The text of the new Article proposed has been quoted above.[1] It is sweeping but rather vague. The Representative Assembly is to be elected by the legislative bodies of the members of the League; it is to meet regularly, with very broad functions of examination and advice; but the details of "formulating the constitution of this Assembly" are left to the Council.

[1] p. 218.

While this proposal was put forward by the British, it was in fact the proposal of Smuts, and Cecil was opposed to it. Accordingly, the Drafting Committee, which included Cecil, reported as follows:

> The Committee considered whether it would be possible to bring the League into more direct relations with the peoples of the States members of the League. They found great difficulty in devising any satisfactory plan for the purpose and they do not recommend the inclusion in the Covenant of any Article of this kind at the present moment. If, when the scheme is laid before the public, there should be manifested a strong feeling that something of the kind should be done, the matter might be reconsidered. It is suggested that reference to the point might be made when the Convention is proposed to the Plenary Conference.[1]

This brought the matter before the Commission at its Ninth Meeting on February 13.

At this meeting, Smuts submitted his proposal in another and even more vague form:

> At least once in four years, an extraordinary meeting of the Body of Delegates shall be held which shall include representatives of national parliaments, and other bodies representative of public opinion, in accordance with a scheme to be drawn up by the Executive Council.

Aside from Smuts himself, no member of the Commission was in favor of the proposal at all. Cecil, Larnaude and Wilson expressed their disapproval; Hymans spoke at some length in opposition, and Orlando was of the same view. It was so obvious that the proposal was unsatisfactory to the Commission that it was not put to a vote or even formally withdrawn; it simply disappeared when the discussion shifted to the number of representatives each Member of the League might have in the Assembly.[2]

One of the points that had been made against Smuts' proposal was that necessarily every Member of the League must be free to choose its representatives in the Assembly as it saw fit; and Wilson had pointed out that in the draft, as it then stood,[3]

[1] Such a reference may be found in the speech delivered by Wilson on February 14. See Document 23.

[2] For the debate see p. 231 *sqq.* and the minutes of the Ninth Meeting in Documents 19 and 20.

[3] Changed from the Hurst-Miller Draft, which had fixed two as a maximum.

the number of representatives was not definitely fixed. The disquieting possibility of this omission was that the delegations from different countries might in some cases be unduly numerous. So the Commission proceeded to fix a maximum, considered five as too large and determined on three; and while every one agreed that each delegation would have only one vote, Scialoja wisely proposed that this should be stated explicitly.

So the result of the discussion of Smuts' proposal was that the number of representatives at the Assembly meetings was limited to three for each Member of the League with an explicit statement of the international rule of one vote.

Officially, this was the end of any suggestion for a Representative Assembly. Simply to complete the record, however, I mention that in March a member of the American Secretariat submitted a memorandum on the matter to Colonel House with a new draft of an amendment with the same purpose. This Colonel House handed to me on March 19, saying that it had been disapproved.

CHAPTER XXIII

CRITICISMS AND CHANGES

President Wilson was away from Paris for just a month; he left on February 14 and returned on March 14. The draft Covenant presented to the Peace Conference on February 14 was really submitted to the world for comment; and comment came in a flood of criticism and suggestion of all kinds and from all quarters, friendly and hostile, important and unimportant.

Among the honest critics there were of course those who thought that the Covenant went too far and others who were sure it did not go far enough; some who would have changed its form and others who would have made additions to it which in the aggregate would have been many times as large as the document itself.

Undoubtedly at this stage the most important criticisms were those which came from the United States. America was debating the League; Wilson had made his speech at Boston on February 24, and he had conferred with the Senate Committee on Foreign Relations. That part of American thought which was against any Covenant at all Wilson necessarily had to oppose; but he also had to recognize that American sentiment demanded certain changes in the text. Those most friendly to his plans, regardless of party, such as Senator Hitchcock and ex-President Taft, concurred in this view; and Wilson accepted the proposed changes not only in substance, but generally in their very language.

The changes in the Covenant which American sentiment really desired were very well summed up in a letter which Senator Hitchcock wrote to the President as he started back to Paris. It is dated March 4, 1919, and read as follows:

> A number of Republican Senators who signed Lodge's manifesto on the League of Nations constitution will, in my opinion, vote for it nevertheless if it is a part of the peace treaty. A still larger number will give it support if certain amendments are made. The following I would mention as likely to influence votes in the order given:
>
> First, a reservation to each high contracting party of its exclusive control over domestic subjects.

Second, a reservation of the Monroe Doctrine.

Third, some provision by which a member of the League can, on proper notice, withdraw from membership.

Fourth, the settlement of the ambiguity in Article 15.

Fifth, the insertion on the next to the last line of first paragraph of Article 8, after the word "adopted" of the words "by the several governments."

Sixth, the definite assurance that it is optional with a nation to accept or reject the burdens of a mandatory.

I wish you a safe journey.

Mr. Taft's telegram of March 18 was to substantially the same effect:

If you bring back the treaty with the League of Nations in it, make more specific reservation of the Monroe Doctrine, fix a term for duration of the League, and the limit of armament, require expressly unanimity of action in the Executive Council and Body of Delegates, and add to Article 15 a provision that where the Executive Council of the Body of Delegates finds the difference to grow out of an exclusively domestic policy, it shall recommend no settlement, the ground will be completely cut from under the opponents of the League in the Senate. Addition to Article 15 will answer objection as to Japanese immigration, as well as tariffs under Article 21. Reservation of the Monroe Doctrine might be as follows:

> "Any American state or states may protect the integrity of American territory and the independence of the government whose territory is threatened whether a member of the League or not, and may, in the interest of American peace, object to and prevent the further transfer of American territory or sovereignty to any power outside the Western hemisphere."

Monroe Doctrine reservation alone would probably carry the treaty, but others would make it certain.

Now there was nothing in any of these changes which in itself was of particular importance to any of the other Powers at Paris; the matter of withdrawal directly concerned the question of French security, but Clemenceau did not really take the League very seriously, and the French made less objection to a withdrawal clause than might have been expected; and while Lloyd George attempted to bargain for some kind of a naval agreement

with the United States in exchange for the Monroe Doctrine proposal, it was the naval agreement, and not the Monroe Doctrine, that he cared about.[1]

Proposals of changes were also to come from the British, the French and the Neutrals; but none of the French or British proposals that were new were especially contentious; those of the Neutrals, which looked toward a considerable elaboration of the Covenant, could in general safely be laid to one side as matters for the future; and so far as the various ideas which were put forth for additions to the Covenant were concerned, they were mostly to be rejected as tending to load down the document with provisions which might cause opposition but would bring very little, if any, support. The major problem was to satisfy public opinion in the United States.

One incidental problem, however, was the question of form. The text of the Covenant was necessarily to be somewhat recast and framed as a part of the Treaty, rather than as a single document.

Wilson had two things to accomplish by his return to Paris; one, to perfect the Covenant and the other, to shape the Peace in accordance with his ideas. It seemed to me in Paris at the time and has always seemed to me since, that he would have done better not to have made his second visit. I say his second visit advisedly, because I thought his first visit, in December, was wise; and that he had the power to go I never doubted,[2] despite some expressions to the contrary on the part of others.

When Wilson left Paris on February 14, his prestige was unimpaired; he had indeed made notable progress in various ways. The mandatory principle had been accepted; not as wholly as he would have wished, but still as far as acceptance was possible. There was agreement that the Covenant should be a part of the Treaty and there was a draft Covenant. Many very difficult problems remained; Reparations, the Left Bank of the Rhine, French security, the Adriatic and Shantung are examples. Wilson could have directed the negotiations about these as well from Washington as in Paris, just as he could have obtained from Washington as in Paris the necessary changes in the Covenant; and by staying in Washington he would have had the enormous

[1] See Chapter xxx.

[2] I wrote an opinion on the question for President Wilson in October 1918. With some changes in form, it appeared in the *Harvard Law Review*, Vol. xxxvi, No. 1. "Some Legal Aspects of the Visit of President Wilson to Paris."

advantage of keeping in touch directly with American sentiment, and being able to a great extent to influence it. At the same time he could have given more attention to those social problems arising from the ending of the war which were coming up in the United States. Such success as could have been obtained in Paris regarding the details of the Peace would have been just as much to his credit as if he had been there and any lack of success would not have touched his fame.

However, this is an account of what was and not of what might have been. "On ne refait point l'histoire par hypothèse."

I may say here that the very general belief that the European Powers were unaware of or at least were surprised later on by the fact that the Senate of the United States may propose amendments or reservations to a treaty, or may refuse to accept it, is a mistaken one. The delegations at Paris were perfectly familiar with the powers of the Senate and knew that they had often been exercised in the past. The British thought about the matter very often in connection with the Treaty of Peace; indeed in March, 1919, memorandums of mine regarding Senate procedure and showing in detail what happened in the Senate at the time of the Treaty of Peace with Spain, giving even the party representation and the party vote by figures, were shown to them.

Equally erroneous, of course, is the notion that the United States is the only country that rejects treaties signed by its plenipotentiaries. The fact is that almost all countries that have a written Constitution have provisions for the submission of treaties in general or with some exceptions to their legislatures. Instances of legislative rejection of negotiated treaties are extremely numerous; scores of them might be mentioned; the point is one of common knowledge of international lawyers and is treated by every writer on the subject.

It would be impossible to give any chronological view of the various criticisms of the Covenant which were considered in detail, but I shall mention some of them as I go along.

The first important conference which took place regarding changes in the Covenant after Wilson's return to Paris was on March 18. The British had been considering the Covenant text very carefully and had some important ideas to propose regarding its form and substance. These were first developed at a conference which Lord Robert Cecil had with Colonel House and myself on the morning of the day mentioned. At this meeting amendments were not textually discussed, but only in general

terms; and it is of course to be remembered that the Draft of the Covenant which was before us was that of February 14.[1]

Cecil first spoke of the general form of the Treaty and said that he did not think well of the suggestion of having the Covenant in the Preamble as I had proposed (which was not, strictly speaking, my proposal), but that it should go in whatever its appropriate place in the treaty was, and that Germany should agree to it. His own preference was to have Germany a member of the League, as Lloyd George wished, but he supposed this would be impossible on account of French opposition. House assented and said he thought it would be better to have Germany in the League than to have her intriguing outside. House asked my opinion and I replied that I thought well of Germany being in the League but not on the Council.

Cecil's reference here to what I "had proposed" alluded to a discussion which I had had with Sir Maurice Hankey on March 14. My suggestion was not that the Covenant should go in the Preamble, but that it should be put at the beginning of the Treaty and be followed by the Peace terms; and at that interview with Sir Maurice Hankey I had written out a few lines to show this suggestion as a matter of principle, but not as a matter of drafting. The real point in Cecil's proposal, while highly technical, was equally important; it came to this: that Germany, while not a Member of the League, should agree to the Covenant. And so the Treaty reads:

> The High Contracting Parties [Germany being one] . . . . agree to this Covenant of the League of Nations.

So by the Treaty of Versailles Germany accepted the Covenant and became as much bound by that acceptance as by any other provisions of the Treaty, although at the same time not having the privileges of a Member of the League of Nations; and the significance of this agreement did not escape the critical examination of the Treaty by German jurists. It had even some influence in bringing about Germany's entrance into the League; for Germany was, so to speak, in a position opposite to that of the United States; she was bound by the terms of the Covenant without any of its privileges; the United States, by the Treaty of

[1] With the following pages generally, see the text of this Draft in the Annex to the English minutes of the Tenth Meeting of the Commission on the League of Nations in Document 19.

Berlin, received all the privileges of the Treaty of Versailles without any burden of its obligations.

Cecil's further suggestion as to form was that Article 7 should be recast so as to name all the States Members of the League in a protocol or schedule, and that this list would include the neutrals. He asked me if there was any objection to a protocol being drawn, on the theory that it might be regarded as a separate instrument by the Senate. I told him I saw no such objection, but in any event the protocol could be called a schedule and made a part of the treaty, and then, certainly, there would be no objection.

Cecil then went over various suggestions of amendment that he had, saying that there were some other questions of drafting, but that he would take up only the important matters.

The next question was as to Article 3. Cecil thought that the Council should have the possibility of expansion by co-opting other States, with the approval of a majority of the Assembly. House agreed with this.[1]

He next proposed to change Article 8 (on armaments), chiefly in point of form. In the second sentence, first paragraph, he wanted to make it clear that the limits of armaments are to be adopted *by the Governments,* which was indeed the meaning of the text as it stood. It is to be noted that this is one of the changes specifically urged by Senator Hitchcock in his letter which I have quoted above.[2] Cecil also wanted to change the language of paragraph three of Article 8 so as to make the interchange of information applicable to all the matters mentioned. This was really a change in drafting only.

The only change in substance, which he said he cared very little about, but which was wanted by the British Admiralty, was to change the prohibition of any alteration in the armament limits, when adopted, without "the permission of" the Council, so as to permit such alteration upon "notice to" the Council.

Coming to Article 10, he read the Canadian views,[3] which were very much against it, on the theory that Canada might be dragged into a European war. He also said that some amendment in that regard would be proposed by Hughes of Australia. He read an amendment, with which he said he was not satisfied, which would take out the word "preserve"; and his final sugges-

[1] See Article 4 as it now reads.
[2] See p. 276 *sq.*
[3] See the Memorandum of Sir Robert Borden at p. 354 *sqq.*

tion was that there should be a reference in this Article to Article 24 (now 19) regarding the reconsideration of Treaties. I pointed out that the French would feel that the whole life of the League was taken out by a change in Article 10 such as the Canadians had suggested, and that in reality the second sentence of Article 10 softened the effect of the first sentence considerably.

Cecil next suggested a change in Article 15 to meet the wishes of the President in the case of a dispute and a report by the Council which was unanimously agreed to but which *none* of the Parties to the dispute liked; the change would have provided that only when one Party to the dispute wanted the report of the Council carried out (and the other did not) would the third sentence of the second paragraph of this Article apply; that is, the last part of that sentence, then reading "and that, if any party shall refuse so to comply [with a unanimous report] the Council shall propose the measures necessary to give effect to the recommendation." [1]

He then mentioned the idea of having a financial council of the League, which he thought would be advisable in a mild form as a substitute for the elaborate proposals of the French;[2] and he

[1] The final solution was the omission of this clause. See p. 291.

[2] These "elaborate proposals" were those of M. Klotz. They were brought forward on January 25 at a Plenary Session of the Peace Conference and had been discussed before the Financial Commission which on April 5 made this "Report on the Project of a Financial Section of the League of Nations":

The Financial Commission adopted the principle of the existence of a Financial Section of the League of Nations, and considered that its duties should be as follows:

1. To advise the League of Nations, either the Executive Council or the general body of Delegates, inclusive of naval and military sections, on any financial questions which may be referred to the section.

In principle the advice of the financial section must be asked. However, in exceptional cases the League of Nations must have discretion to act without seeking such advice.

2. To investigate any financial questions which may seem to the Section to require the attention of the League of Nations, and to make recommendations thereon to the Executive Council of the League of Nations.

3. In cases of financial questions arising out of international disputes, to prepare the materials for a decision for submission to the Judicial Court.

It is desirable that the Financial Section should not only give advice in case of legal proceedings being taken, but should also be empowered to suggest compromises to the Court.

4. To nominate International Financial Commissions, the formation of which has been decided on by the League, and to exercise over them such control as the League may direct.

5. To summon International Conferences at which States other than States members of the League might be represented, for the discussion of financial questions of international interest.

6. To undertake all other powers or functions which may be assigned to the section by the League of Nations.

7. To control the execution of the Financial Terms of the Treaty of

said that there was nothing in the Covenant, except perhaps in Article 22 (now 24, paragraph one) on the subject. House suggested that the clause should be made general, not only to include financial matters but perhaps others; and I pointed out that Article 4 (now 5, paragraph two), which gives power to appoint committees, had in a former draft [1] given express power to appoint committees from outside the Assembly or Council, and that this had been dropped as it had been thought unnecessary.[2]

At the close of the conference Cecil said that he was going to see the newspaper men and that he would speak of the incorporation of the Covenant in the Treaty of Peace, and also submitted to House whether he should say in substance the following about the Monroe Doctrine: that if the Monroe Doctrine meant that the American hemisphere was permanently separated from the rest of the world it was pernicious and was opposed to the Covenant; but if it meant that nothing was done in the American hemisphere without the consent of the United States, that it was in accord with the Covenant. House said that he saw no reason for not saying this, and asked me what I thought of it. I said I saw no objection to it.

Thus the discussion was wholly of the British proposals; no American amendments were suggested, but the Monroe Doctrine was obviously in mind.

This conference was preliminary to a detailed discussion with President Wilson that evening. House and Cecil dined with the President, whose usual dinner hour was about seven o'clock. He was perhaps the only statesman in Paris who dined early, as the general dinner hour there was very late. I joined the meeting in the library of the President's house at eight o'clock when the amendments proposed by Cecil were gone over one by one. Cecil had with him three printed copies of the Covenant of February 14, each with his proposed changes written in red ink.

The result of the conference was that most of Cecil's proposed amendments were accepted by Wilson. A new text incor-

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Peace in the event of the League of Nations receiving general control of the Treaty.

Note. If the League of Nations does not control the execution of the Financial Terms of the Treaty of Peace, an Interallied Commission should be appointed for this purpose.

The Klotz proposals were never discussed by the Commission on the League of Nations; but see the French amendment proposed to Article 21 in the Annex to the French minutes of the Twelfth Meeting. The "mild form" to which Cecil referred is printed in a parenthesis at the end of Document 28.

[1] See Document 7, Article 2.

[2] Such committees have frequently been appointed.

porating these accepted amendments was subsequently printed giving a comparison with the text of February 14 in parallel columns. I reprint this paper [1] as Document 24. It will be found a convenient reference in following the changes which were agreed upon and also in connection with the somewhat detailed account of this conference which follows. In that account I incorporate mention of those changes proposed by Cecil which were *not* accepted and which accordingly do not appear in that print.

As I mentioned above, there were only three copies of the proposed Cecil amendments; so at the beginning of the meeting I had some difficulty in taking note of them while sitting beside the President, who had one copy; so Colonel House handed me his copy and asked me to sit next to him so that he could look it over and thus all might follow the discussion which was carried on chiefly by Wilson and Cecil.

Cecil's first change [2] in the Preamble was said by him to be simply for euphony, as the words "secure" and "security" came close together; but by his second change in the Preamble he intended to have Germany agree to the Covenant, although not a Member of the League. The importance of this change I have pointed out previously.[3] Because of it, it was also agreed that the expression "States Members of the League" instead of "High Contracting Parties" should be used throughout after the Preamble, and this change first occurs in Article 1.

The use of these words "States Members of the League" caused some difficulties later on, for some of the Members of the League, such as India and (at least in 1919) the British Dominions, were not "States," although to be Members of the League.

The third change in the Preamble which Cecil proposed was that the word "Articles" should be inserted in place of the word "Covenant"; but this was dropped.

In connection with Article 3 Cecil explained that the purpose of his amendment (paragraph 2) was to provide for an addition to the Executive Council. The President said perhaps that could be left to the Body of Delegates; to which Cecil replied that they might swamp it, and the President agreed that they might. Cecil said that really the Great Powers had to be the essential factor and that he was thinking of the future participation of Germany

[1] For clarity, the form of the original print is somewhat altered.
[2] As to this change and those mentioned in the following pages, see generally Document 24.
[3] See p. 280.

and even of Russia. In answer to French objections it could be said that France would be on the Executive Council and could prevent any addition. Cecil thought, however, that if Germany became a really great Power the pressure to have her added would be very great. The President said that Germany would be a great Power after a few years except in a military sense, but that, however, it was better not to go farther than the proposed amendment, in view of sentiment now which had to be taken into consideration.

The amendment to Article 4 (paragraph 2, the rule of unanimity) was stated by Cecil and admitted to be nothing more than a statement of what the Covenant would mean if it was not contained in it, but inserted to satisfy sentiment. It was at first suggested to leave out the words "at the meeting," but after some consideration it was thought that they had better remain so as to prevent one State from stopping the holding of a meeting, or to cover the case when one Member might not find it possible to be represented.

At Article 4 the President asked if there had been any discussion of a place for the Seat of the League. House said that the Swiss had been around talking to everybody about it and were perfectly willing to have the League take any territory it wanted, either at Geneva or Lausanne. He said that he had had the climatic conditions looked into and they would be about the same; Geneva would be more convenient; and that the property which the Swiss were willing to give and which it would probably be necessary to take over was worth ten million francs; that he did not think that the countries of the world should accept that from a comparatively poor Power. Cecil agreed to this, although he said, laughingly, it would be a very good investment for them to give it away for that purpose.

There was also some discussion of Swiss neutrality; Wilson said that neutrality was a part of the Swiss constitution and that the whole Canton in which the Seat of the League was situated would be given to the League for that purpose, and that neutrality of the whole State of Switzerland would be recognized by the League. It was agreed tentatively to put Geneva or Lausanne in the blank in Article 5, so that it might come up for discussion. Cecil said that nearly everybody, for one reason or another, was opposed to having the Seat of the League in Belgium.

Cecil explained his amendments to Article 7 as partly necessary because of the assent of Germany while she lacked member-

ship, and that otherwise the Article was changed so as to make the language positive and not negative. The provision for a two-thirds majority for the Body of Delegates was retained, after some discussion, in order to please the French; so the only difference between the text proposed by Cecil for Article 7 and that agreed on at this conference was that the latter reads "two-thirds majority" instead of "majority."

As to Article 8, Cecil explained that his changes were in the way of simplification in drafting, except the proposal to change "the permission of" to "notice to" in the last sentence of the first paragraph of the Article; as proposed by Cecil, this read:

> These limits, when adopted by the Governments, shall not be exceeded without notice to the Executive Council.

He said this was wished by the British Admiralty, and the President said he did not see how it could be accepted. Cecil then said that he would not press it,[1] but he wished the President would understand that he had various other amendments of the Admiralty and it would be understood that he had pressed them very seriously, but as this was the weakest of the lot and the President had not accepted it, it was not worth while mentioning the others.

In the last paragraph of Article 8, the Cecil proposal used the verb "agree." This was changed to "undertake."

Otherwise Article 8 as agreed on at this meeting (see Document 24) was as proposed by Cecil.

The views of the British Admiralty regarding Article 8 were unsympathetic. They were expressed in a memorandum addressed to Cecil, of which I was given a copy. It seems to me of sufficient importance to reproduce here, noting that some of the points raised in it are suggested again in the Geneva Questionnaire of 1925:

> 1. The adoption of Article VIII of the Covenant of the League of Nations involves consequences of so grave a nature and so prejudicial to the interests of this and other countries that the Departments concerned with National Defense feel themselves compelled to represent in the strongest possible manner that the proposals it contains should be given further and fuller consideration.

[1] The language agreed on read thus: "These limits, when adopted by the several Governments, shall not be exceeded without the concurrence of the Executive Council."

2. The Admiralty, the Army Council and the Air Council are in entire sympathy with the desire to reduce the total armaments of the world. A Scheme designed to prevent war and to further international cooperation is a matter of public policy, in which their immediate responsibilities are not touched and they would desire to support and assist in its developments to the best of their ability. But they feel bound to point out that the introduction at the present stage of proposals for the limitation of armaments, before the League of Nations has established its power to afford security to its members, may delay rather than advance the reduction of armaments, since many intricate and delicate questions, the solution of which should preferably await an atmosphere of security, will be involved.

3. Further, the acceptance of the proposal for limitation of armaments entails a serious constitutional consequence which the Admiralty, Army Council, and Air Council cannot accept without the strongest protest: namely, the abrogation of their constitutional duty of advising their Government as to the strength of their Naval, Miltary and Air Forces.

4. While fully appreciating the force of the desire, on the grounds of public policy, that private enterprise in armament production should cease, it is observed that the effects of this proposal would operate to the advantage of an aggressive power, and would seriously compromise the security of fully established democratic countries which would be most reluctant to spend money and effort in accumulating in peace time the resources which they would require in the event of war. It is further maintained that the proposal would tend to provoke rather than to prevent war, and the reasons for this view are set forth in the attached Appendix.

5. It is therefore held that the prohibition of the manufacture of munitions and implements of war by private enterprise should be excluded from the main Covenant of the League of Nations and should be reserved for further consideration and examination.

6. To the proposal that there shall be full and frank publicity as to all national armaments and military, naval or air programmes, the fullest acceptance can be given.

7. Finally it is strongly urged that the whole question of the Limitation of Armaments should be reviewed independently of the general Covenant of the League of Nations.

The above arguments show how difficult it is to deal with the question in a brief generalization, while on the other hand the establishment of the League of Nations on a satisfactory and durable basis would in all probability permit the question of armaments to solve itself by a natural process.

Appendix

[to foregoing Memorandum]

THE QUESTION OF AN INTERNATIONAL AGREEMENT FOR GOVERNMENT OWNERSHIP OR CONTROL OF ARMAMENT FIRMS AND ITS RELATIONSHIP TO A LEAGUE OF NATIONS.

1. The idea of a governmental control of armament firms, eliminating, as it might be expected to do, the influence of wealthy organizations, whose interests lie in the multiplication of war-like material, and whose main profits are derived from war, is an attractive one. It is, however, necessary to examine the results of its probable working and make sure that in eliminating one set of evils worse ones are not introduced.

2. The experience of the war has shown that very few nations are self-supporting as regards armaments and munitions. If it had not been for the factories of the United States, the position of the Allies would have been excessively difficult, if not impossible, before the entry of America into the war.

3. If armament firms had been under governmental control the supply of their products by a neutral government to a belligerent would have been prohibited by International Law and the vast resources of America would not have been available to the Allies. The effect of this on their fortunes might well have been disastrous. The blockade, which was so largely responsible for the ultimate defeat of the Central Empires, in denying to them munitions or their essential ingredients, produced a state of affairs which may be comparable to the results which would follow from governmental control of armaments.

4. It may be argued that the prospect of such a state of affairs would act as a preventative of war, or at least as a deterrent. This argument obviously breaks down in the case of the late war, because the Central Powers as the aggressors would have had everything to gain by such a rule, which would operate to the advantage of a nation seeking to achieve victory by a sudden attack. Any country dependent on outside sources for the supply of armaments and munitions would be impelled to accumulate munitions and to build up armaments in peace time, if it were not to be at a disadvantage in case of war. An aggressive nation would thus be encouraged to maintain itself nearly on a war footing, a condition of affairs which would tend to precipitate the very explosion it is sought to avoid.

5. If an effective and world-wide League of Nations was established, governmental control or ownership of armament firms would be a perfectly feasible arrangement, and in keeping with the general idea underlying the League. In these circumstances, however, the necessity for such control would largely disappear.

It is, moreover, a *sine qua non* that the League should be *effective and should include all nations.* Nations which are not great munitions producers must have absolute guarantees that if they go to war on behalf of the League the members who are capable of supplying them with munitions shall place themselves in a position to do so, whether they do or do not undertake active hostilities.

6. Again, it would be essential, not only that all nations whether within or without the League should accept the principle of national control of armament firms, but also that the League should be able to ensure that they continue to enforce its faithful observance. Any nation which evades such observance for reasons of economic or military advantage could reduce the effect of the control to a nullity. In the case of explosives, the essential ingredients of which are used to the widest extent commercially, adequate supervision would be well-nigh impossible.

Furthermore, all aircraft are inherently weapons of war. Measures aimed at the limitation of the production of air-craft as part of national armaments would therefore inevitably limit also the production of aircraft for commercial purposes.

There was some brief discussion of Article 10. Cecil's proposed amendment was to insert after the word "undertake" the words "subject to the provisions of Article 24" (i.e. Article 22 of the amended text, now Article 19, permitting the Assembly to advise the reconsideration of inapplicable treaties, etc.). Accordingly, by Cecil's amendment, the first sentence of Article 10 would have read:

> The High Contracting Parties undertake, subject to the provisions of Article 24, to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League.

Cecil said that he did not think his proposed amendment made any difference in the meaning. Wilson said that this was the one Article on which the French relied and he did not see how it could be weakened; so the change was not accepted.

Wilson agreed to the Cecil amendment to Article 11 without any special comment, although it seemed to me that it was quite important. Similarly, the amendment to Article 14 was accepted, although it appeared to provide for obligatory arbitration.

My views at the time on these two amendments were expressed in a letter written that same evening (dated the next day) to Colonel House, which I copy below. The change in the first paragraph of Article 11 remained in the Covenant and my

fears about it were no doubt unwarranted; as framed it made the concluding words of that paragraph read: "and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations" instead of "and the H.C.P. reserve the right to take any action," etc.

The amendment to Article 14 regarding the Permanent Court of International Justice was later changed in its language and as changed became the basis of the jurisdiction of the Court to render advisory opinions. Very likely the words of the Cecil proposal were not intended to have the sweeping effect which might properly, I think, be attributed to them; but it is well that they were modified later on; as written, it added these words to the language of the Article defining the jurisdiction of the Court: "and also any issue referred to it by the Executive Council or Body of Delegates."

What I wrote to Colonel House follows:

> Herewith I hand you copy of the Covenant marked to show the changes of last evening.
>
> In looking over these changes it occurs to me that the amendment to Article 11 will tend to increase the President's difficulty with the Senate, as it makes compulsory, action on the part of the League to prevent war.
>
> It seems to me that still more objection will be raised in the Senate to the addition to Article 14. This goes the whole length of permitting the Executive Council or the Body of Delegates to compel arbitration. It is true that the Permanent Court contemplated in the Article is not yet established, but its establishment would make compulsory arbitration depend solely upon the vote of the Executive Council, a vote from which the parties to the dispute would be presumably excluded.
>
> I venture to call to your attention what seems to be the effect of these amendments in view of the fact that neither one of them received any discussion.

Next for discussion was the second paragraph of Article 15. As proposed by Cecil, this paragraph was to read as follows, the change suggested being in the phrase italicised:

> Where the efforts of the Council lead to the settlement of the dispute, a statement shall be published indicating the nature of the dispute and the terms of settlement, together with such explanations as may be appropriate. If the dispute has not been settled, a report by the Council shall be published, setting forth with all necessary facts and explanations the recommendation

which the Council think just and proper for the settlement of the dispute. If the report is unanimously agreed to by the members of the Council other than the parties to the dispute, the States Members of the League agree that they will not go to war with any party which complies with the recommendation and *that if any of the parties to the dispute is willing to comply with the recommendations, and if any other party refuses so to comply the Council shall propose the measures necessary to give effect to the recommendation.* If no such unanimous report can be made, it shall be the duty of the majority and the right of the minority to issue statements indicating what they believe to be the facts and containing the recommendations which they consider to be just and proper.

A comparison of this proposal with the two texts of the same paragraph of Article 15 in Document 24 will show clearly the point discussed and the conclusion reached.

The President said he had thought of the matter a good deal. Cecil said he had proposed his amendment in order to clear up the ambiguity suggested by the President in a case where a recommendation was not satisfactory to either party to the dispute. The President spoke of the hypothetical case urged in the Senate Committee on Foreign Relations, that the Japanese might acquire a harbor for a naval base in Magdalena Bay; that if the matter was submitted to the Council, with Japan and the United States not voting, the other Powers, possibly because of some ill feeling against the United States, might decide unanimously that the fears of the United States were not well founded and that it would be an insult to Japan to suppose that she required the harbor for anything except commercial purposes. He said that all this seemed highly improbable to him, but it was a perfectly fair answer for the Senate to say that that was only his opinion. What, under those circumstances, would the Council propose? Following the discussion the President suggested that the amendment be dropped and that the words in the third sentence of the paragraph, after the word "recommendation" where it first occurs, be stricken out. This was accepted.

Textually, the effect was this. In the Covenant of February 14 the third sentence of the second paragraph of Article 15 read as follows:

If the report is unanimously agreed to by the members of the Council other than the parties to the dispute, the High Contracting Parties agree that they will not go to war with any party which complies with the recommendation, *and that, if any party shall*

refuse so to comply, the Council shall propose the measures necessary to give effect to the recommendation.

The words in italics were stricken out. This reversed the decision of the Commission made at its Seventh Meeting, following the discussion of the Fifth Meeting. I have previously referred to the matter at some length, mentioning my views against the idea embodied in the words now omitted, then called "the Veniselos amendment."[1]

The Cecil amendments to Article 17 were accepted as merely preventing ambiguity, substituting the Council for the League to decide what modifications, if any, would be necessary in *ad hoc* membership.

The next Cecil amendment was to combine Articles 18, 20 and 21 in one Article (numbered 19 in the revised text in Document 24). The President suggested one change in the opening words, namely, to substitute "conventions hereafter to be agreed upon" for "any conventions agreed upon," so as to make it clear that those conventions were for the future. This change and one which Colonel House proposed, to insert the words "communications and" before the word "transit" in paragraph (c) were accepted.

The re-writing of these three Articles into the new Article 19 made a Covenant of twenty-four Articles instead of twenty-six. The resulting changes in numbering appear in Document 24; the Mandates Article, formerly 19, became 18, and Articles 22 to 26 became respectively 20 to 24.

A suggestion for a Financial Commission [2] was hardly more than mentioned and disapproved.[3]

[1] See p. 192 *sq.*

[2] See p. 282 as to this suggestion, where the mention was of a financial council or section.

[3] The remark in the text is literally from my Diary of March 18. However, in the minutes for March 19 of the American Economic Group, at which were present General Bliss, Admiral Benson, Mr. Baruch, Mr. Davis, Mr. Hoover, Mr. Lamont, Mr. McCormick, Mr. Robinson and Mr. Strauss, the following appears:

> Mr. Strauss said that the Treasury representatives had always acted upon the assumption that the contemplated Financial Section of the League of Nations would not concern itself with either post-war financial arrangements among the associated powers, or with the collection of debts from the defeated powers. That its chief function would be to frame financial issues in controversies which might come up before the League of Nations.
>
> Colonel House believed that it was the President's intention, though he had approved the creation of a financial section, to confine its activities to harmless questions.

Cecil proposed that the final article should read as follows:

> Amendments to this Covenant will take effect when ratified by the States whose representatives compose the Executive Council and by a majority of the States whose representatives compose the Body of Delegates. Provided that if any State member of the League disapproves of any alteration so made it may withdraw from the League.[1]

The discussion of this proposal brought up the whole question of withdrawal. The result was to disapprove the proposal and to suggest a tentative amendment permitting withdrawal, to see how it would be received, although it was admitted that the French would be very much opposed to it. This tentative amendment read as follows:

> Any State member of the League may upon giving two years' notice withdraw from the League upon reasons stated.

Wilson stated that the majority of the delegates, led by Orlando, had said that a State had the right to withdraw from the League under the Covenant as now drafted. Cecil said that was not his understanding at all; Wilson asking my opinion, I told him that except under the doctrine of changed conditions, which was known as the doctrine of *rebus sic stantibus,* my opinion was that a State did not have the right to withdraw from a treaty; that the doctrine of changed conditions had been used as a ground for any violation of a treaty; that in modern times treaties had usually been drawn to continue for a certain period, with a clause permitting denunciation thereafter, and that this was true even of treaties of alliance, such as the Triple Alliance, for say a twelve-year period. The President said that when he had lectured in international law he had thought that a State had the power to denounce any treaty; I said in reply that that was not my opinion as to the legal right, although as to the power I did not question that a State had power to denounce a treaty. Cecil said that he agreed with my statement.

The question then came up as to the insertion of an Article that domestic affairs of a State should not be within the province of the League. This led to the discussion of the Japanese and Irish questions. The President said that it was his opinion as a constitutional lawyer that the treaty power was extensive enough to override State laws about land, and that if it did so in Cali-

[1] Cf. Article 26 of the Covenant.

fornia the question would be one between California and the United States as to that, and not between the United States and Japan. He said this was purely a hypothetical case, of course; the Senate would never ratify such a treaty. He then spoke of the Irish question and said that he had been made very angry by a delegation of the Irish who had visited him while in the United States and had requested him to promise to ask the Peace Conference to make Ireland independent. Of course he had refused to promise anything about it. He had decided then to go to Mr. Lloyd George and tell him what the situation was in the United States and ask him whether he wanted nothing done, in which case he would do nothing, but if he wanted something done, what it was; but he told him the situation and that the question might be raised in the United States by the Irish making a campaign against the League on this ground, and that this would raise a racial and religious question which would have far-reaching consequences. Of course, he said, it would be overwhelmingly defeated and would insure the success of the League, and that his first impulse had been, from his fighting blood getting up, that he had wanted to tell them (the Irish) to go to hell, but he realized that while that might give some personal satisfaction it would not be the act of wisdom or the act of a statesman. He said, however, turning to Lord Robert Cecil, that the Irish question might get to such a state that its discussion in the League of Nations might be inevitable, and Cecil said that he quite agreed with this. The President said that the attitude of the Irish was that they would create such a disturbance so continuously as to compel international notice to be taken of them; if an article was put in against interference in domestic affairs, it would be said by the Irish to have been put in directly as a shot at them. This would start the sort of campaign that he had mentioned. House suggested that the President might say this to the Senate Committee on Foreign Relations as they were urging the insertion of such an Article.

On the suggestion of the President that there was some contention in the United States that a State might be compelled to accept a Mandate,[1] Cecil wrote out this last paragraph of the Mandates Article:

> Nothing in this Article shall be interpreted as compelling any State to be a mandatary.

[1] See the letter of Senator Hitchcock quoted p. 276 *sq.*

The Cecil proposals included an additional Article regarding the time when the Covenant should take effect. It read as follows:

> The provisions of this Covenant shall come into effect as soon as it has been ratified by Great Britain, the United States of America, France, Italy and Japan.

It was agreed on my suggestion that this should be left out, as there would undoubtedly be a general clause as to when the treaty should take effect, and that this would include the Covenant.

The Japanese question was only incidentally discussed, but when it was mentioned I handed to Colonel House a copy of the dispatch summarizing the Ishii speech of March 14.[1] He said that he had seen it, but he read it over again.

In the course of the discussion Cecil said that the Japanese were talking to Hughes about some clauses for racial equality and that they were getting on very well with him.

There was some talk about the Monroe Doctrine. The President alluded to the fact that the Monroe Doctrine had never been defined and that the Senate did not want it defined. He spoke of the question with Mexico after the Civil War. He alluded to the fact that the Monroe Doctrine had permitted force to be used, or at least threatened, against the South American republics. He said that the Doctrine as originally launched had been to prevent the extension of the European system to the American continents. I then handed him this extract from the text of President Monroe:

> The American continents by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

This he said he had overlooked and that the Doctrine was also pointed against European colonization. It was agreed (without my opinion being asked) that it would be impossible to put in the Covenant a reservation of the Monroe Doctrine without a similar reservation of an Asiatic doctrine of the Japanese, and accordingly the idea was disapproved.

The President endeavored in vain to find a copy of Senator Hitchcock's letter to him [2] and discussed it from memory. He

[1] At the Japan Society Dinner in New York.
[2] Quoted at p. 276 *sq.*

spoke of his difficulty on the withdrawal question in view of his having told the Senate Committee on Foreign Relations that there could be withdrawal at any time, based on what Orlando and the others had said.[1]

Then the question came up about printing and I told the President the text could be printed so as to show the amendments, and possibly in the Congressional form with a line through what was stricken out and new matter italicized. Later on, in talking with the printers, I found that this was not possible and the new text was set up in a form somewhat similar to Document 24.

Various meetings were mentioned: that with the Neutral Powers on March 20 at 3 o'clock, and probably the following day, and the meeting of the full Commission which was agreed to be called for March 22 at 10 A. M.

The conference ended about half-past ten, when I went to my hotel to dinner and then to my office for a few hours.

My account of this conference has been taken largely from my Diary. Another record of it made at the time was my statement at the meeting of the American Commissioners on the following morning. The notes made of that meeting of the Commissioners were submitted to me for correction and are ~~as follows~~:

> The Commissioners stated that they understood that Mr. Miller had been present the previous night at the Conference between the President, Colonel House and Lord Robert Cecil, at which certain amendments proposed for the Covenant of the League of Nations had been discussed. Mr. Miller stated that these proposed amendments were of two kinds, those which had been agreed upon and those which had been discussed but had not been approved. The first category of these amendments could briefly be summarized as follows:
>
> 1. A provision was added in Article 3 whereby an increase of membership on the Executive Council is facilitated. This amendment had in view the eventual possibility of Germany or Russia being represented on the Executive Council.
> 2. A provision was added to Article 4 in which it was expressly stated that all decisions of the Executive Council should be by unanimous vote unless otherwise specified.
> 3. Article 7 which deals with the admission of new States to the League of Nations was so amended as to be positive in its sense rather than negative.
> 4. The word "permission" in the last sentence of paragraph 1 of Article 8 was changed to read "concurrence." The

[1] See p. 293.

British suggestion to change the words "the permission of" to "notice to" was not accepted.

5. Article 11 was amended to become mandatory by the substitution of the words "the League shall" for the words "the H. C. P. reserve the right," in the first paragraph.
6. To Article 14 was added a clause providing that the Permanent Court of International Justice should also consider *all* matters referred to it by the Executive Council or the Body of Delegates.
7. In the second paragraph of Article 15 the words "and that if any party shall refuse so to comply, the Council shall propose the measures necessary to give effect to the recommendation" were struck out.
8. In Article 17 a clause was inserted stating that nothing in the Covenant of the League of Nations should be so construed as to force a State to be a mandatory of the League.
9. Articles 18, 20 and 21 were assimilated into one Article for the sake of uniformity in the drafting.

Two suggested amendments were also disapproved. The first was a proposed amendment whereby any nation could withdraw from the League after giving two years' notice. This amendment was abandoned because of the conviction that the French Government would not adhere to it; but it is to be proposed. The second was a proposed amendment involving the weakening of Article 10. Both Canada and Australia were particularly interested in this amendment, but inasmuch as Article 10 was being relied on absolutely by France to guarantee her against future aggression from Germany, it was not accepted.

The first drafts of a Monroe Doctrine clause which I saw were handed to me on March 19. One of them was written by Lord Robert Cecil and the other, very similar to it and based on Cecil's draft I think, was written by Mr. T. W. Gregory, then Attorney General of the United States. They read as follows:

(Cecil) Where any coercive action has to be taken in the Western hemisphere under Articles X, XIII, XVI, or XVII no power outside that hemisphere shall take part in such action except at the request of the United States of America and the other states members of the Ex. Council if any situated in that hemisphere.

(Gregory) No coercive action shall be taken in the Western hemisphere under Articles X, XIII, XVI, or XVII except at the request of the United States of America and the other States members of the Executive Council, if any, situated in that hemisphere.

When Colonel House handed me these drafts I expressed an unfavorable opinion regarding both of them and thereupon wrote out a draft of my own which read thus:

> Subject only to the provisions of this Covenant, the liberty of action in matters of national policy and of domestic concern heretofore belonging to the States, Members of the League, is recognized as continuing.

The idea of my draft was to cover in one general clause both "domestic questions" and the Monroe Doctrine. The basis of the form of this draft of mine was of course the Tenth Amendment to the Constitution of the United States. The following day I revised it slightly and submitted this revised draft also to House:

> Subject only to the express provisions of this Covenant, the liberty of action in matters of domestic concern and of national policy heretofore recognized as belonging to the States Members of the League, is recognized as continuing.

None of these drafts had any special influence in the framing of the text later adopted. The draft of Cecil and the similar one of Gregory were clearly insufficient to cover the Monroe Doctrine; at the utmost they related to only one phase of it. My own draft, like the others, omitted mention of the Monroe Doctrine *eo nomine* and went too far in referring to national policy generally. But so far as it related to matters of domestic concern, it still seems to me much preferable to the language of Mr. Taft which was finally accepted as an amendment to Article 15.

On the same day, March 19, was received a summary of the views of Mr. Root which came in a dispatch to Mr. Lamont as follows:

> Senator Elihu Root stated that he was giving careful study to the documents in the light of the historical difficulties which complicated the task of the Peace Commission and did not want to express any opinion until he had matured his judgment. We did not ask him for any authority to state his present personal views of the Covenant. He talked however with us very frankly and from his talk we gathered:
>
> 1. That he fully appreciates the very great difficulty of the Commission in getting a large number of States to agree upon anything that is reasonable.
>
> 2. That he thinks there are many commendable features in the plan notably the great step forward that is made in insuring common counsel on political disputes before war is entered upon.

On the other hand he regretted:

A. The failure to create a court and the apparent breaking down of the distinction that has been growing up in the last generation between justiciable and political questions.

B. The guarantee of political boundaries in Article 10 which he felt committeed the various nations including the U. S. of America to intervention in many boundary disputes with which they were not concerned. He mentioned particularly the long time dispute between Chili and Peru on the boundary line in the Arica District and asked on what side of the controversy the guarantee of the United States would be enforced.

C. He took a very broad view of the whole problem of the Monroe Doctrine feeling that we very properly had an interest in world affairs, as the war itself had disclosed, but that our interest in European affairs was only to the extent that they threatened to become world questions, that our force should be put back of European disputes only when required to protect world order and that conversely the eastern hemisphere should not come into the western except under the same conditions. Without attempting to technically state his views it seemed to us that he substantially took the position that while we had an interest and responsibility in European affairs it was a secondary interest and responsibility and that their position in the eastern hemisphere was similar to ours in the western.

D. That the provisions as to voting needed clearing up; that if the proposed organs of the league were merely international conferences the rule as expressed by Lord Robert Cecil in his speech, that unanimity was required except where the contrary was provided, might prevail. However, it was not clear from the instrument whether the bodies created would merely be conferences or whether the league would be a union or even a confederation and that it might well be urged that questions would be decided by majority vote except where the contrary is specifically stated.

We found Senator Elihu Root's whole attitude toward the documents temperate and constructive. He plainly indicated his hope that the discussion should not be along partisan lines, the issues involved being so great.

In this connection you may be interested in knowing that today papers announce the formation of a nation-wide non-partisan organization of which Henry Watterson of Louisville is President and George Wharton Pepper of Philadelphia an active Director the purpose being to oppose the Covenant in its present form. Lodge is to have a public debate with President Lowell in Boston next week. Meanwhile Senators Borah, Reed and Thomas are speaking against the Covenant every night, the newspapers reporting that they have large audiences.

My comment on Senator Root's views, expressed in a letter of March 19 to Mr. Lamont was this:

> You have asked me to comment on the dispatch regarding Senator Root's preliminary views of the Covenant, which are expressed with his habitual American and statesmanlike attitude. I shall refer to them under the lettered headings of the paper you handed me.
>
> A. I believe that both Senator Root and the Administration would go farther in creating a court and in drawing a distinction between justiciable and political questions of dispute than the Senate would be willing to go. I do not believe that there would be any difficulty here on that question if Paris did not feel sure that there would be difficulty in Washington.
>
> B. The question of boundary disputes presents some difficulty. We are certain to be at least sentimentally interested in boundary disputes in South America, as we are in the Tacna-Arica dispute in which Peru asked us to mediate. Under the Covenant, if both the disputants were members of the League, there would be either an arbitration or an investigation. If neither were a member, the matter would simply be one which would come under the general clauses of Article XI if war were threatened or broke out. If one of the parties were a member and the other not, which would perhaps be the case with Peru and Chili, the result, I should think, would be either an adjustment of the dispute by agreement, or its investigation and adjustment according to the result. I say this particularly in view of the fact that the Tacna-Arica question is one which is largely financial in its nature.
>
> C. The question discussed is not only one of the highest political importance but of immediate importance. France does not think that our interest in a future attack of Germany on France is secondary but primary, and feels that that possibility should be the first concern of the world in general and of America in particular, while admitting that no such attack for the next few years is possible. Whether this feeling on the part of France is right or wrong is not the question, for it exists in a degree which it is almost impossible to overstate, and any attempt to limit our responsibility in the matter would defeat the whole Covenant, for France would prefer then to make a different kind of peace with Germany and not to have a League. Certainly without the League we could hardly refuse her the right to make a peace with Germany which would let her feel secure, but such a peace would then be made as would be contrary to everything we have stood for.
>
> The position of France is that our guarantees must be strengthened, and however desirable it might be it seems impossible in a League of Nations to devise a formula which would recognize the

wishes of France and not give, at least technically, the same sort of guarantees to Poland or Greece.

It would be possible, of course, to make an alliance with France to that effect but any such idea is the opposite of the idea of the League of Nations.

D. It is proposed to add to Article IV the following clause:

> "Except where otherwise expressly provided in the present Covenant, decisions at any meeting of the Body of Delegates and of the Executive Council require the agreement of all the States represented at the meeting."

The printing of a new text to show the changes agreed to on March 18 by Wilson and Cecil[1] was going on and was finished just before breakfast on March 20. I have already referred to the form of this paper,[2] which is Document 24. There was also printed a corresponding French text which it is not necessary to reproduce. The basis of this was the French text of February 14, the necessary changes in which were made in my office.

The changes in the text of the Covenant agreed on at the conference of March 18 between Wilson, Cecil and House represented progress in the direction which was of supreme importance at this stage. It was vital that the changes desired by American public sentiment should be made. President Wilson had before him what was really an authoritative statement of such necessary changes in the six points mentioned in the letter of Senator Hitchcock which I have quoted.[3] I call this an authoritative statement because Senator Hitchcock was the acting leader[4] of the Democratic party in the Senate and he was fully in touch with Senatorial sentiment.

President Wilson was entirely willing to meet these desires and the record that I make here will prove this. The idea that he was wont arrogantly to reject suggestions of others is a myth of partisan hate. The last three of Senator Hitchcock's points had now been completely covered; the first three were under discussion and were to be covered, the Monroe Doctrine, domestic questions and withdrawal.

There was another essential, not quite so vital as the insertion of the changes which American opinion desired, but still to my

[1] See p. 283 *sqq.*
[2] See p. 296.
[3] At p. 276 *sq.*
[4] Senator T. S. Martin of Virginia was titular leader until his death on November 12, 1919.

mind of the greatest importance. New matter in the Covenant should be kept out as far as it was humanly possible to do so. The world had had before it for a month or more a text for discussion; there was no insistent demand anywhere for additions other than those desired by America; the Covenant permitted its own amendment; future changes should be left to the future League.

CHAPTER XXIV

MEETINGS WITH THE NEUTRAL POWERS

On March 20 and 21 a Sub-Committee of the Commission on the League of Nations held meetings with the representatives of thirteen Neutral Powers to discuss the Covenant text of February 14. The Sub-Committee included Cecil, who presided, and House, Bourgeois, Hymans, Veniselos and Vesnitch; at these meetings the Draft was discussed Article by Article. Various Neutral Powers presented a number of textual amendments; in one Document (25) will be found the minutes of the two meetings, in French and in English; with them are the amendments proposed.

The Swiss Government, which was very actively in favor of the establishment of a League of Nations, had previously presented a Memorandum of general comments on the Draft of February 14, which it seems appropriate to print here. This Memorandum (quoted below), the exact date of which is uncertain, dealt somewhat with a question of primary interest to Switzerland, namely, her status of neutrality, and this point had been more elaborately treated in a previous Swiss Memorandum, to which I shall refer again:[1]

> The Swiss Federal Council have repeatedly expressed their hearty and decided approval of the idea of a League of Nations. They therefore welcome the draft prepared by the Conference of February 14th, 1919, as an important and decisive step towards the realization of the great ideal. From the special point of view of Switzerland, however, the Government deems it necessary to give expression to the following wishes:
>
> 1. Switzerland considers the exclusion of any States, especially of those depending by their geographic position and the needs of their economic life on their intercourse with members of the League, as apt to provoke counter-alliances and thereby to endanger peace. It should be formally declared that all States offering the necessary guarantees for the fulfilment of the duties involved by the membership of the League, are to be admitted.

[1] See p. 429 *sqq.*

2. For the reasons exposed in the memorandum[1] of February 8, 1919, Switzerland must maintain her neutrality, all the more as according to the draft of the Paris Conference war remains one of the methods of defending national interests which are still recognized by international law. If Switzerland was to sacrifice her neutrality for the exceptional cases in which war is waged against an illegitimate war, her neutrality would scarcely be respected in all ordinary cases of war. Switzerland believes, moreover, that even in a common military action of the League she could render greater services by her neutrality than in taking an active part in a campaign. It might besides be worthy of consideration to examine whether permanently neutral States with an inviolable territory are not especially appropriate for sheltering the residence of the League.

It is understood that neutrality could not be interpreted as allowing any sort of assistance to be given to the States in conflict with the League.

3. Switzerland would have welcomed an absolute enforcement of peace in the League by means of a disposition entirely prohibiting war. At all events, she believes it to be most desirable that the principle of compulsory arbitration be assigned a field as wide as possible within the system of the League and that an intervention of the Executive Council or an appeal to that body be possible only in case a decision has been reached neither by a commission of conciliation nor by a tribunal of arbitration chosen by the parties. Switzerland feels bound to lay stress upon this wish, especially as other States than the Great Powers are only granted a very limited representation in the Executive Council. The decision whether an international dispute is justiciable or not, should if possible not be dependent on the discretionary power of the parties but should be reached by a body enjoying all the essential attributes of a Court of Law.

The contradiction which seems to subsist between Article XII (paragraph 2) and Article XV (paragraph 2 in fine) should be removed through the acceptance of the wider interpretation which may be gathered from the text of Article XII. Consequently, in case the defendant party accepts the recommendation of the Executive Council, war should at all events be excluded, even if this recommendation has not been approved of unanimously in that Council.

4. Switzerland, though recognizing the importance of the Great Powers for the activity of the League, would nevertheless wish the principle of equality of States to be better observed. Especially the organization of international jurisdiction should be based on an entire equality of States.

[1] See p. 429 *sqq.*

5. It is desirable that the powers of the League be delimited more distinctly, especially that intervention in the interior affairs of the members of the League be formally excluded and that, on the other hand, the development of international law be taken in hand by the Body of Delegates.

6. It should be clearly determined whether the League is to be indissolvable or whether a withdrawal by notice shall be admissible. If, according to Article XXVI a majority is enabled to enact generally binding decisions, there should either be some treaty provisions establishing certain Fundamental Rights or else a right of withdrawal should be conceded.

7. As until now neutral States have not yet had any opportunity of stating their opinion, the draft of February 14, 1919, should yet be possible of certain modifications. Switzerland would have preferred if the Treaty of Peace had only contained a few fundamental principles concerning the League of Nations, and if it had left the Statute of the League to be worked out at a general Conference meeting immediately after the conclusion of peace.

The minutes of the meetings with the Neutral Powers (Document 25) render unnecessary any detailed review of them. Discussion of the composition of the Council and the provisions of Article 16 related to some questions which have been greatly debated since and which have not yet been fully answered. Proposals were made for the establishment of Commissions of Conciliation; and various Powers wanted detailed clauses for the establishment of the Permanent Court of International Justice. The elaborate Scandinavian proposal[1] which was subsequently presented to the Committee of Jurists which drafted the Statute of the Court was referred to in this connection.

It was well recognized at these meetings that there were serious differences between the French and the English texts as they then stood; my notes contain a reference to this; and while the minutes in French do not mention it, according to the English minutes, Cecil specifically said that the English text of the Covenant was the authentic one.

My own part at these discussions with the Neutrals was that of an observer. As the remarks were in English or in French at the taste of the speaker, Professor Rappard, who was one of the Swiss delegates, sometimes acted as a volunteer and highly expert interpreter. In theory, I suppose that I took the place of Colonel House at times when he went out of the room; but

[1] See Permanent Court of International Justice, Advisory Committee of Jurists, Documents Presented to the Committee (1920) p. 151 *sqq.*

really I had nothing particular to do, so took some notes; and while perhaps these add little if anything to the minutes, I reproduce them here:

Cecil takes chair. Asks for procedure Article by Article.

Argentine speaks generally; cannot speak specifically as to details; hopes for instructions.

Venezuela asks whether draft is that of 14 February.

Cecil answers Yes; project not adopted.

Venezuela: Would neutrals be asked their advice as to subsequent amendments?

Bourgeois speaks of amendments already presented; made public; may be discussed.

Cecil says any subject may be discussed that is relevant, but members of Commission will not now present amendments.

Swiss agrees to detailed discussion.

Dutch asks as to French or English text. (Both, differences privately recognized).

Chili expresses adhesion.

ARTICLE I

No observations.

ARTICLE II

Huber, Swiss, proposes amendment.

Spain proposes two amendments.

Spain against (B) of Swiss. Favors (A) and (C) of Swiss.

Spain asks the meaning of "sphere of action of the League"; asks to add "visées par les articles du présent Pacte."

Norway asks for yearly meetings at times fixed in advance.

Cecil says that fixed periods were intended, but at the discretion of the Body of Delegates.

Norway asks for five delegates instead of three—for the purpose of different political opinions. Asks that meetings of B. of D. shall be public except when necessarily private.

Holland wants precision as to rights of League as against rights of States.

Cecil says that only when sovereignty is *expressly* limited, is it limited.

Venizelos calls attention to final proposal of Swiss.

ARTICLE III

Denmark proposes 2 delegates for each of the five Powers and 8 for eight other Powers.

Holland asks for precision between Body of Delegates and Executive Council.

Cecil replies that this is a question for each Article as it comes.

Sweden wants more small States in the Executive Council, and supports Denmark.

Chili wants election of 4 small States left to small States, not to all States.

Norway asks for an Executive Council of 15.

Holland thinks the principles by which 4 small States should be chosen should be stated.

Spain asks for different classes of small States.

Switzerland supports 10 votes for 5 Great Powers and 8 small Powers.

Sweden supports a definite statement as to method of choice of small Powers.

ARTICLE IV

No observations.

ARTICLE V

Denmark proposes choice of Secretary General by Body of Delegates.

Switzerland supports.

Holland supports.

Spain wants personnel distributed.

Sweden supports Denmark.

ARTICLE VI

No observations.

ARTICLE VII

Holland asks as to whether colonies and dominions have a separate vote.

Switzerland proposes her redaction.

Norway wants a majority vote to admit.

Denmark supports Switzerland.

Cecil points out that Swiss amendment is more than form.

Spain prefers *original*.

ARTICLE VIII

Dutch amendment—"L'Assemblée des Délégués arrête une loi (un règlement) concernant la réduction des armaments." Explanation is that the "law" would require unanimity.

Spain prefers present text, but proposes authority to Executive Council to certain numbers to authorize increase.

Denmark proposes that prohibition of private manufacture be the subject of plan.

Bourgeois recalls French amendments.
Spain supports them.

ARTICLE IX

Denmark proposes an addition for control by the Commission.
Sweden supports Denmark.

ARTICLE X

Chili proposes guarantee of all treaties.
Cecil: Commerce treaties?
Chili: Yes.

ARTICLE XI

Nothing except language.

ARTICLE XII

Swiss amendment.

ARTICLE XIII

Holland proposes permanent Court of Conciliation.
Sweden supports Swiss.

March 21.

Dutch ask as to ambiguity between XII and XIII.

ARTICLE XIV

Swiss proposes amendment.
Danish amendment proposed.
Norway supports.
Question as to whether the constitution of the Court should be determined now.
Swiss supports the Court Plan.

ARTICLE XV

No observations.

ARTICLE XVI

Holland proposes two amendments.
Denmark proposes three amendments. As to the second of these Cecil asks if a perpetually neutral State is bound by any of the three obligations—by (1) commercial etc. by (2) military, by (3) passage by land.
Denmark would agree to (1) not (2) or (3).
Cecil says the question is really one of (3) as (2) is only conditional.

Sweden wants a distinction made in economic matters—*some* trade permitted.

Spain points out a constitutional difficulty as to (3).

Norway also.

Cecil asks for statements as to constitutional difficulties.

ARTICLE XVII

Chili asks for a modification that would leave out last half of Article.

Cecil says that no State that does not come in can expect much sympathy.

ARTICLE XVIII

Spain calls attention to *contrôle*—supervision; surveillance.

Spain proposes amendment as to colonies.

ARTICLE XVIII BIS

Proposed by Swiss.

ARTICLE XIX

No discussion.

ARTICLE XX

Spain and Switzerland approve.

Argentine.

ARTICLE XXI

Very little said.

ARTICLE XXII

Cecil in reply to Spain says express consent necessary even if all parties are in League.

ARTICLE XXIII

No discussion.

ARTICLE XXIV

Nothing said.

ARTICLE XXV

Discussion as to offensive and defensive alliances.

ARTICLE XXVI

Swiss amendment.

CHAPTER XXV

ELEVENTH MEETING OF THE COMMISSION

THE next definite step in the drafting of the Covenant was that reached at the conclusion of the meeting of the Commission on the League of Nations on March 26, the Thirteenth Meeting of the Commission and the third of its meetings after Wilson's return to Paris. In connection with any account of those three meetings, it will be convenient to mention some of the discussions outside of the Commission during this period.

It must of course be remembered that I do not attempt to paint a picture of other concurrent negotiations, although some of these were more or less directly related to the drafting of the Covenant. The French were bargaining about the Rhine and Lloyd George wanted to get something in return for an agreement on the Monroe Doctrine clause. To some of those negotiations I shall refer later.

The first of the three meetings[1] of the Commission on the League of Nations to consider the Covenant of February 14 in the light of developments since that date was held on March 22. During this Eleventh Meeting, which commenced at three o'clock and lasted for about four hours, the Commission went over the Preamble and the first eight Articles of the Covenant.

Before reviewing just what was done, it should be pointed out that the papers before the Commission included of course the English and French texts of February 14, and also the English reprint showing the changes agreed upon at the meeting between Wilson and Cecil on March 18 (Document 24) and a print of a corresponding amended French text. The various amendments proposed by the Neutral Powers (see Document 25) were also on the table, although it was agreed that these were not to be regarded as proposals unless put forward by a member of the Commission.

The French minutes[2] of this meeting of March 22 (in Doc-

[1] Document 24 is a convenient reference for the English text considered by these three meetings and for many of the amendments as well.

[2] My texts of the French minutes of the three March meetings of the Commission are each marked "Epreuve." So perhaps they differ somewhat from the final form.

ument 20) contain quite a full yet not wholly complete account of the proceedings. The English minutes are in general more summary; and at one or two points my own notes are supplementary.

As will be shown in detail, the changes agreed to on March 18 between Wilson and Cecil (see Document 24) were moved by the latter as amendments to the Commission text of February 14. Mostly these changes were adopted as offered, thus making the text of March 18 to this extent the Commission text, including the substitution throughout (after the Preamble) of "States Members of the League" for "High Contracting Parties." However, almost at the very beginning it was agreed that a Drafting Committee should be appointed, so that in a sense every amendment passed was subject to later action of the Drafting Committee on the language.

The account of the opening of the meeting in the English minutes is as follows:

> At the request of President Wilson, Lord Robert Cecil explained that two meetings had been held under his chairmanship, at which views had been exchanged with the representatives of 13 Neutral Governments. The Neutrals had seemed to show general approval of the Covenant. In accordance with the desire of an illustrious member [1] of the Peace Conference, he proposed that any suggestions made by, or intended to satisfy, the Neutrals should be put forward as coming from members of the Commission. This was agreed to.
>
> President Wilson said the Commission would now resume the consideration of the Covenant.

The procedure agreed on, which is not above mentioned, was that the text should be taken Article by Article. The French minutes indicate this and show also that Bourgeois and Larnaude took part in the discussion. This is also indicated in my notes which I now quote:

> President speaks of conferences U. S. and here. Asks Cecil to speak.
> Cecil reports.
> Bourgeois, Larnaude; Procedure.
> President suggests procedure Article by Article, etc.
> President asks for big text.[2]

[1] Meaning Clemenceau.
[2] i.e. Document 24.

In the English minutes the account of the discussion of the Preamble includes the following:

> He (Cecil) proposed a method by which Germany might be made to agree to the Covenant without becoming a member of the League. The end of the Preamble should run: "the High Contracting Parties agree to the following Covenant as the constitution of the League of Nations" and "States Members of the League" should be substituted for "High Contracting Parties" in the body of the Covenant. This was agreed to.[1]
>
> * * * * * *
>
> It was further agreed that the Drafting Committee which would be required later should have orders to make no changes of meaning; when the Committee had finished, the revised draft should be circulated to members of the Commission: if anyone objected, the old wording should stand.

What this means as to the Preamble is that it was passed in the form agreed to by Wilson and Cecil on March 18 (see Document 24) including the change of one word in its opening phrase not mentioned in the above minutes. My notes simply say that the Preamble was adopted; and there is no reference in the French minutes to the agreement about the Drafting Committee. However, as will be seen, the Drafting Committee was frequently mentioned in the subsequent discussions.

Article 1 was somewhat changed on the proposal of Larnaude, who objected to the use of the word "sessions" in the French for reasons which the English minutes very naturally do not make clear at all. The result in the English text was a sentence of fewer words, which was not only clearer but more accurate. To show this, I print the text as it stood, with the omitted words italicized:

> The action of the League under the terms of this Covenant shall be effected through the instrumentality of *meetings of* a Body of Delegates representing the States Members of the League, of *meetings at more frequent intervals of* an Executive Council, and of a permanent international Secretariat to be established at the Seat of the League.

No change was made in Article 2. Cecil proposed and withdrew an amendment looking toward publicity as to the Assembly.

[1] Here follows a remark by Hymans regarding Belgian drafting amendments. The English minutes as first written up do not contain this and neither do the French minutes.

According to my notes the text of the amendment was to add the following words to the Article:

> The proceedings of the Body of Delegates shall be made public unless it is otherwise determined.

The English minutes give a very summary account of the matter. However, as the French minutes show, there was considerable discussion of the proposal and a good deal of opposition to it. Two of the remarks are worth quoting:

> Larnaude: Il faut éviter de reproduire servilement les règles qui gouvernent le Pouvoir législatif, le Pouvoir exécutif, le Pourvoir judiciaire d'un Etat moderne. Le seul à atteindre est de créer des organismes de nature à éviter la guerre et de leur donner les règles les plus efficaces de fonctionnement pour atteindre ce résultat.
>
> Orlando: Il a fait remarquer, que plusieurs matières assez importantes n'étaitent pas traitées dans le Pacte; on lui a répondu que la Société aurait à faire elle-même, beaucoup de règlements pour combler les lacunes. Cette réponse lui a paru très justifiée et il demande qu'elle soit appliquée à la présente circonstance. Le devoir de la Commission est d'agir vite, et le plus pratique sera de s'en rapporter à l'expérience de la Société pour réglementer la publicité des séances et des décisions.

Orlando's suggestion that the question be left to the experience of the future was wise. Certainly this experience has tended more and more toward publicity not only in the Assembly but also in the Council.

The French minutes also say that Cecil proposed that the number of possible representatives for each Member in the Assembly be raised from three to five, a figure which the Commission had previously rejected. It is added that after observation by Vesnitch, Hymans and Makino, this proposal was withdrawn. I could not now say that this statement in the French minutes is inaccurate; but my notes, like the English minutes, are blank regarding it.

Regarding Article 3, the English minutes are neither complete nor wholly accurate; as there are some slips in the French minutes also, I give my own account of the proceedings: "In order to meet criticism that the League was dominated by the Five Great Powers," as the English minutes put it, Cecil first moved to insert in the first paragraph of the Article the words "the repre-

sentatives of States[1] permanently represented on the Council shall not participate in this selection."

The effect of this amendment would have been that the choice of the non-permanent members of the Council would have been made by the eligible Powers themselves exclusive of the Great Powers.

While this was pending,[2] Hymans proposed an entirely different system, the text of which in the French minutes is this:

> le Conseil exécutif se compose de 9 membres élus dans son sein par l'Assemblée des Délégués. Ils seront tous citoyens d'Etats différents parmi lesquels figureront nécessairement cinq représentants, des Etats-Unis, de l'Empire britannique, de la France, de l'Italie et du Japon.

This was a most extraordinary proposal and one utterly impossible of acceptance. What my own notes say about it is "Belgian amendment proposed and overwhelmed." Thereupon the Cecil amendment was withdrawn.

These two amendments being dropped, Cecil then moved the new second paragraph of the Article as he and Wilson had agreed to it, adding to it, however, a proviso of his own, so that it read:

> The Executive Council may, subject to the approval of the majority of the Body of Delegates, co-opt on the Council representatives of States other than those specified above, provided that in any such increase due regard shall be had to just proportional representation of States not permanently represented on the Council.

In this form the paragraph was adopted, although the French minutes do not mention the proviso.

Bourgeois then suggested, as the French minutes relate, that there ought to be an amendment providing for an immediate meeting of the Council in cases of urgency. Consideration of this, however, was postponed until Article 11 was reached, in which Article indeed such a provision now appears. My notes mention this amendment, but the English minutes make no allusion to it.

[1] The English minutes have a "not" here, reversing the meaning.

[2] The English minutes put the proposal later; but this is a mistake, as both the French minutes and my notes show. Indeed, an earlier draft of the English minutes omits Hymans' proposal entirely. Its later insertion puts it at the wrong point.

The idea of drawing a dividing line between the functions of the Council and those of the Assembly, with a more or less precise definition in each case, has been frequently suggested since the League was established. To some extent it had been proposed by Switzerland[1] and during the discussion of Article 3 it was brought forward by Hymans. The remarks of Wilson and of Cecil which ensued seem to be much better reported in the French minutes than elsewhere. Cecil admitted that no clear distinction had been drawn in the text and thought, wisely, that it was preferable to leave the matter to solve itself by the later action of the two bodies of the League. Wilson supported these views, particularly because he was unwilling to exclude any matter whatever from the consideration of the Assembly; Hymans expressed himself as convinced that it would be better to leave the question to the experience of the future and withdrew his proposal.

Finally, Cecil moved an amendment[2] to the last paragraph of Article 3, in which no change had been proposed on March 18. It then read thus:

> Invitations shall be sent to any Power to attend a meeting of the Council at which matters directly affecting its interests are to be discussed and no decision taken at any meeting will be binding on such Power unless so invited.

The new text adopted as Cecil suggested was this:

> Invitation shall be sent to any Power to attend and sit as a Member at any meeting of the Council at which matters directly affecting its interests are to be discussed.

Article 4 was changed only by the insertion of the unanimity paragraph as agreed to by Wilson and Cecil on March 18, reading as follows:

> Except where otherwise expressly provided in the present Covenant, decisions at any meeting of the Body of Delegates or of the Executive Council require the agreement of all the States represented at the meeting.

In about the same language the foregoing text is now the first paragraph of Article 5 of the Covenant. Cecil's statement is of some importance in connection with the interpretation of that Article, for he spoke of the amendment as "merely a spe-

[1] See Document 25, Swiss proposal regarding Article 2.
[2] The French minutes speak of this as an added paragraph.

cific statement of a fundamental principle of the League." There was no dissent from this view, although, as the French minutes show, there were some observations as to possible exceptions to be expressed; but it seems clear that it was agreed that the ordinary international rule is generally as applicable to the Council and to the Assembly as to other international Conferences.

When Article 5 was reached, Wilson read a Note from the Swiss Government proposing Geneva as the Seat of the League; the text of this note does not appear; and Hymans made a declaration for Brussels which is given in full in the minutes. My notes on the Article read thus:

> President reads letter from Swiss.
> Hymans speaks for Brussels.
> President says only Belgium, Holland and Switzerland have proposed themselves. Suggests Sub-Committee.
> Cecil proposes Committee of 4 to be appointed by President.

The various accounts are not entirely in accord as to the discussion. There is no mention made in the English minutes or in my notes of the remarks of Larnaude and Bourgeois which appear in the French minutes. According to this record, Larnaude suggested the neutrality of Switzerland as an obstacle to her admission to the League. The result of the discussion was to decide upon the appointment of a Sub-Committee to consider the question.[1] The fact was that the sentiment was overwhelmingly in favor of Geneva.

The statement has often been made that if it had not been for Wilson's opposition the Seat of the League would have been fixed at Brussels; in truth the feeling the other way was so strong that it is very doubtful if Brussels could have been chosen even with Wilson's support. The general sentiment was that a country which had not been engaged in the War should be selected. The British were outspokenly in favor of Geneva; there was hardly a country except France and Belgium which would have favored the choice of a capital so obviously under French influence as Brussels. It is noteworthy that none of the other Powers represented on the Commission, either at this meeting or at the earlier meeting of February 5, the Third Meeting, said a word in favor of the Belgian request.

Thereupon, on Cecil's proposal,[2] the provision as to the

[1] This Committee was named at the Thirteenth Meeting of the Commission.
[2] Cf. the Danish Amendment in Document 25.

Secretary General which in the earlier text had read simply "who shall be chosen by the Executive Council," was altered so as to require confirmation by the Assembly and also to make specific provision for the first occupant of the post:

> The first Secretary General shall be the person named in the protocol hereto and his successor [1] shall be chosen by the Body of Delegates on the nomination of the Executive Council.

Article 6 was simply referred to the Drafting Committee to consider the language, in view of the suggestion of Larnaude that the word "inviolability" was a more accurate expression than "extraterritoriality."

As to Article 7, concerning the original membership of the League and the later admission of Members, there was a discussion which my notes at one point call "violent." There is quite a long account of the debate in the minutes, and here the English are very similar to the French, except that the latter omit the text of the amendments proposed.

At the outset Cecil moved to amend the Article so as to read,[2] as had been agreed on with Wilson on March 18:

> The original members of the League shall be those States which are named in the Protocol hereto. Any fully self-governing State, including dominions and colonies, may become a member of the League if its admission is agreed to by a two-thirds majority of the Body of Delegates provided that it is able to give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its naval and military forces and armaments.

As Wilson did not press his idea of substituting a simple majority of the Assembly for a two-thirds majority, the difference in views was limited to what was apparently a simple matter of procedure suggested by the first sentence of the proposed new text, "a simple question of form," Cecil called it. This was whether the neutral States, some of which, as all agreed, should be early invited to become Members of the League, were to be deemed "original" Members or not. The text of February 14 spoke of a Protocol to the Covenant which should contain the names of the invited neutral States. Thus the names of the

[1] Plural in the English minutes.
[2] Cf. the Swiss draft in Document 25.

signatories to the Treaty were *not* to be in the Protocol, so that the earlier draft may be said to have contemplated three classes of members: the Allied and Associated signatories to the Treaty of Peace, neutral States named in the Protocol and any Members subsequently admitted by vote of the League. Under the new draft as proposed by Cecil, and as he and Wilson had agreed on March 18, the Protocol was to contain the names of *all* the original members of the League, Allies and Neutrals.

Now, the mere question whether neutral Members of the League should or should not be regarded as original Members was perhaps not of great consequence; but lying back of this question of nomenclature and procedure was the much larger question as to just when and how the Covenant was going into force. Bourgeois for the French went so far as to reserve the question as to whether the Covenant was to be incorporated in the Treaty of Peace at the time of signature or at the time of ratification, although just what was meant by the very extraordinary language of this reservation was not explained. Even Cecil's idea of a Protocol containing the names of all the original members, Allies and Neutrals, presented real difficulties which had been mentioned previously.[1] The word "Proctocol" suggested a document separate from the Treaty, perhaps signed at the same time, perhaps to be signed later and perhaps subject to separate ratification.

These difficulties became so much emphasized during the discussion of a Protocol to be signed *after* the Treaty that I wrote a note for the President on the matter during the meeting as follows:

> The matter of procedure is one of great difficulty for us. It is getting to the point where the Senate will ratify the treaty and not the Protocol and then there will be no League.

Finally, at the end of the debate, I wrote out a substitute proposal which the President offered and the whole matter was referred to the Drafting Committee; all of which is indicated in my very brief notes of the discussion of the Article:

> Cecil proposes amendment—as in text.
> Portuguese suggests amendment which Cecil sits on.
> Larnaude explains to Bourgeois.
> Orlando overcome with laughter.
> Cecil excepts Mexico.

[1] See p. 281.

Violent discussion by Hymans, W. W. and Cecil.
Discussion of question of procedure.
Cecil says Protocol would be signed after Treaty.
I handed Colonel House a copy of my Monroe Doctrine (amendment)[1] marked "M. D."
After great discussion, I prepared a draft of VII, which, with a change by the President, was sent to the Drafting Committee.

My substitute proposal is set forth in the English minutes, reading as follows:

> The original members of the League shall be those of the signatories named in the schedule annexed to the Covenant, and also those other Powers named in the schedule who are hereby invited subsequently to accede to the Covenant.

I still have the paper which I wrote, with the change in it made by Wilson, the insertion of the word "subsequently". The draft may be compared with the present opening language of Article 1 of the Covenant.

The question of the method of accession did not come up and I did not incorporate it in my draft, although I had previously, on the same day, drawn an accession clause in the following language:[2]

> States named in the Schedule hereto which are not Signatories, may accept this Covenant by a Declaration of Accession thereto without reservation. Such Declaration shall be deposited before January 1, 1920, with the Government of France to be transmitted to the Secretary General of the League. Notice thereof shall be sent to all other States Members of the League.

Article 8, the Disarmament Article, with the March 18 changes,[3] was passed, incorporating also a Japanese amendment to the effect that any disarmament plans adopted should be "subject to reconsideration and revision at least[4] every ten years"; but there was another detailed discussion of the French amendment for a Commission of Verification brought forward again by Bourgeois, and which I once more quote:

> Les Hautes Parties Contractantes résolues à se donner franche et pleine connaissance mutuelle de l'échelle de leurs armements et

[1] Quoted p. 298.
[2] Cf. Article 1 of the Covenant.
[3] They are not given with complete accuracy in the English minutes, where the words "by the several Governments" are omitted. Cf. Document 24.
[4] The words "at least" were added by Wilson.

de leur programme militaire et naval, ainsi que des conditions de leurs industries susceptibles de s'adapter à la guerre, institueront une Commission chargée des constatations nécessaires.

My own notes as to this Article 8 are rather meagre; but I insert them here:

Cecil proposed his amendment.
Japan amendment adopted with addition of "at least."
French amendment proposed.
President objects to it.
Veniselos proposes a compromise which Larnaude rejects and then offers to take with addition. The idea of the French is some idea of inspection and control.
Veniselos offered to put in "under the Executive Council."
President again objects.
Cecil objects.
Bourgeois talks.
Article VIII is adopted.
French reserve right to propose an amendment adding a Commission.

The discussion of the Bourgeois amendment is more fully reported in the French minutes than elsewhere. It is to be regretted that Wilson's remarks about a super-state are not fully available in his own language; but it is worth while, I think, to insert the following version from the French minutes:

Le Président craint que les visites d'une Commission analogue à celle qui est prévue dans l'amendment français pour examiner si les Nations tiennent ou non leurs engagements, ne soient mal vues dans beaucoup de pays. Pareil procédé ne peut être comparé à ce qui aurait lieu à l'intérieur d'un Etat. Si nous avions à faire à une Union d'Etats avec une législature commune, nous pourrions envisager un tel mécanisme; mais, notre idée constante a été d'écarter la conception du Super-Etat et, dans ces conditions, il paraît difficile d'opérer certaines constatations à l'intérieur des Nations associées.

The French amendment was of course not accepted; but Bourgeois insisted on it and reserved the right to submit it again both to the Commission and to the Plenary Session.

Both my notes and my Diary say that Cecil spoke against the French amendment although neither the English nor the French minutes quote him at all. My Diary says that he spoke very earnestly against it, remarking on its uselessness and the danger to the

success of the Covenant which it would create by making feeling in the United States. After the meeting Cecil told me that he thought he had been very badly treated by the French by their insistence on this amendment because Clemenceau had told him that they cared nothing about it.

The proceedings at this meeting are a good illustration of the fact that the text of the Covenant was being passed on in English. The amendments accepted were all changes in the English text although one of them, that of M. Larnaude to Article 1, was proposed in French and related primarily to the French text. The Japanese amendment to Article 8 was on the table in both English and French;[1] but it was discussed in English. The French amendment to Article 8 was proposed in French only; but as it was not accepted no English text of it was made at this time. Curiously enough, the French minutes do not show the text of the amendments proposed to Article 7 which were sent to the Drafting Committee, these amendments, that of Cecil (the text of March 18) and that of Wilson, which was written by me, having been put forward in English; indeed the latter is not mentioned in the French minutes at all. It may also be noted as illustrating this point that various Belgian amendments which were on the table and which will be found in the Annex to the French minutes of the Twelfth Meeting were to a considerable extent intended merely as improvements of the French translation of February 14, so as to make it more in accord with the sense of the English.

[1] Indeed, as submitted in French, it did not read as the French minutes state, but thus:

> Insérer après la phrase "Le conseil exécutif est chargé d'etablir le plan de cette réduction": lequel sera soumis a une révision tous les dix ans.

CHAPTER XXVI

TWELFTH MEETING OF THE COMMISSION

THE Twelfth Meeting of the Commission was held on the evening of Monday, March 24. In the interval, French and English texts of the Preamble and of the first eight Articles as agreed to by the Commission were printed; and I also had an opportunity to examine with some care the highly critical speech [1] of Senator Knox of March 1.

Early in the afternoon of March 24, Mr. Close, one of Mr. Wilson's Secretaries, came to my office and handed me three amendments written on the President's typewriter, which he said the President wanted ready for the evening meeting, in English and in French, all on one paper. The French text was prepared in my office.[2] As Wilson wrote them, the amendments were as follows:

Add to Article X the following paragraph:

Nothing in this Covenant shall be deemed to deny or affect the right of any American State or states to protect the integrity of American territory and the independence of any American government whose territory is threatened, whether a member of the League or not, or, in the interest of American peace, to object to or prevent the further transfer of American territory or sovereignty to any power outside the Western Hemisphere.

Add to Article XV the following paragraph:

If the difference between the parties shall be found by the Executive Council or by the Body of Delegates to be a question which by international law is solely within the domestic legislative jurisdiction of one of the parties, it shall so report, and shall make no recommendation as to its settlement.

Add to Article XXIV the following paragraph:

After the expiration of ten years from the ratification of the Treaty of Peace of which this Covenant forms a part any State a member of the League may, after giving one year's notice of

[1] See Congressional Record, 65th Congress, Third Session, v. 27, part 5, pp. 4687-4694. Among many extravagant statements the speech contained some minor suggestions of interest.

[2] For this as to two of the amendments see the Annex to the French minutes of the Twelfth Meeting in Document 20. I do not reproduce the French of the Monroe Doctrine amendment, as it was never presented.

its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

These amendments of Wilson covered the first three points of the Hitchock letter [1] and also followed Taft's dispatch of March 18 which I have quoted above,[2] from which indeed the language of the proposed additions to Articles 10 and 15 (the Monroe Doctrine and domestic questions) was largely taken. I did not like the form of either one of these and I told Colonel House during the afternoon that I still preferred my own draft [3] which was intended to cover both matters. Still later I discussed the matter with House and Sir William Wiseman, who had a copy of Taft's dispatch. Following these conversations, I revised my draft, making it broader than it had been before and again submitted it to House, as follows:

Liberty of action in matters of domestic concern and of national policy heretofore belonging to the States Members of the League, is recognized as continuing.

Just before the meeting in the evening Colonel House told me to have the mimeographed copies of the President's amendments cut up, so as to leave out the Monroe Doctrine amendment, and to have only the remaining parts of the sheets distributed.

The Twelfth Meeting of the Commission on March 24 went through eight Articles of the text, 9 to 16 inclusive; but the proceedings of this evening were not very definite or precise. Various amendments were adopted subject to their consideration by the Drafting Committee; others were simply referred to the Drafting Committee. Those who were following the proceedings in detail had very great difficulty when the meeting was over in saying that there was any definite Commission text of certain Articles. The result was that the functions of the Drafting Committee were automatically considerably enlarged; the attempt which had been made at the previous meeting to limit the work of the Drafting Committee to language and to exclude substance broke down.

The importance of the clauses passed on justifies a rather detailed description of what took place. I shall refer to my notes as I go along and also to the English and the French minutes.

[1] See p. 276 *sq.*
[2] See p. 277.
[3] See p. 298.

After deciding to grant the request of the International Council of Women for a hearing,[1] the Twelfth Meeting opened with a rather long renewed discussion of the French amendment for an International General Staff.

It will be convenient to insert the text of the French proposal here:

> Un organisme permanent sera constitué pour prévoir et préparer les moyens militaires et navals d'exécution des obligations que la présente Convention impose aux H. P. C. et pour en assurer l'efficacité immédiate dans tous les cas d'urgence.

During the speech of Bourgeois which is given at some length in both the French and English minutes, I wrote the following comment to Mr. Wilson:

> Regardless of the statements of the speech, the amendment which is on the table in French, provides for an International General Staff *all but the name;*

and later on I wrote him this:

> The French amendment is with the idea, which is in the language, that the Commission shall prepare and make effective the means etc. *within the States.* It is not a question of draft but of idea.

The minutes show that Wilson was conciliatory in his remarks; my notes put it "Wilson argues that the present text is broader than the amendment or more elastic"; but unless the French proposal was withdrawn, the discussion could get to no result as the British and the Americans were opposed to the idea in any form of words. The February 14 text of Article 9, to which the discussion related, was as Cecil remarked, itself a compromise between the original text and the French amendment, so that it could hardly be changed further. Slight changes suggested by Kramář were accepted,[2] substituting "Executive Council" for "League" and adding a reference to Article 7 (now 1) so that the Article read:

> A permanent Commission shall be constituted to advise the Executive Council on the execution of the provisions of Articles VII and VIII and on military and naval questions generally.

[1] As to this my notes say: "Letter of Saturday from Lady Aberdeen, requesting permission to attend by a Committee of Women—½ hour to 1 hour at the end."

[2] The French minutes do not mention this fact.

The French, however, maintained their position, leaving the whole matter substantially where it was before.

When Article 10 was reached Wilson said he would propose an amendment later on, referring of course to a Monroe Doctrine clause.

The change of March 18 in Article 11 was adopted;[1] and an amendment [2] proposed by Larnaude with the idea of permitting an immediate session of the Council in cases of urgency [3] was accepted in principle [4] and sent to the Drafting Committee; it read thus:

> En outre, en cas d'incident de nature à mettre en péril le maintien de la paix le Secrétaire général devra, sur la demande de l'un des Gouvernements associés, convoquer d'urgence le Conseil exécutif.

Quite a number of changes were proposed to the provisions regarding arbitration and the court, Articles 12 to 14. The minutes here are somewhat confused.

The language of Article 12 of the Covenant of February 14 was generally regarded as very unsatisfactory both in the English and in the French texts of the Article; and this one of the Articles which was not changed at the Wilson-Cecil meeting of March 18.

The difficulty was in the first paragraph [5] of the Article which read thus:

> The States Members of the League agree that should disputes arise between them which cannot be adjusted by the ordinary process of diplomacy, they will in no case resort to war without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council and until three months after the award by the arbitrators or a recommendation by the Executive Council; and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the recommendation of the Executive Council.

[1] For the text of this see the English minutes, also Document 24.
[2] Originally proposed as an amendment to Article 3.
[3] Such a provision was in various earlier Drafts, e.g. Article 7 of the House Draft (Document 2).
[4] Note that the French minutes say simply it was "adopted." My notes read "French amendment to Article III adopted subject to revision by Committee of Redaction, as an addition to XI."
[5] Two paragraphs in the French.

Here there is first a covenant for delay, that is, a covenant against war during arbitration or inquiry and for three months thereafter. This is the principle of the Bryan Treaties.[1] Then follows an *absolute* covenant against war when there is compliance with an arbitral award and an *absolute* covenant against war when there is compliance with a Council recommendation.

Thus there are two principles here; the principle of delay during which adjustment is possible; and the principle of the sacredness of an arbitral award or its near equivalent, the Council recommendation. While the two principles have some common ground, they do not go well together in statement for they seem, when read together, to emphasize the possibility of war in a case not within the covenant for delay, such as after the three months moratorium.

The drafting finally adopted, which leaves the moratorium covenant in Article 12, puts the covenant against war in the case of arbitration in Article 13, which refers to that subject, and puts the covenant against war in the event of a unanimous recommendation by the Council in Article 15, which deals with such recommendations, made, I think, no change in legal substance, but certainly is a very real improvement in form.

Both Larnaude and Cecil made proposals [2] to recast the phraseology and both these proposals were sent to the Drafting Committee (as stated in the English minutes and my notes) although the French minutes say that Larnaude's amendment was withdrawn and, except in the Annex, make no mention at all of Cecil's amendment. The text of the Cecil amendment is incorporated in the English minutes; it proposed to strike out all after the semicolon and insert "as hereinafter provided"; and the correct text of the Larnaude amendment is in the Annex to the French minutes; its two paragraphs were as follows:

> Les Hautes Parties Contractantes conviennent que s'il venait à s'élever entre elles des différends qui n'auraient pu se régler par les procédés ordinaires de la diplomatie, elles devront soumettre les éléments du différend à une enquête confiée au Conseil exécutif ou à un arbitrage.
>
> Elles ne devront jamais recourir à la guerre contre tout membre de la Société qui se conformera à la recommandation du Conseil exécutif.

[1] See *Treaties for the Advancement of Peace*, Scott, Oxford University Press (1919).

[2] See also the Belgian suggestions in the Annex to the French minutes of the Twelfth Meeting in Document 20.

A Japanese amendment to Article 12, a very important proposal providing for a suspension of military preparations while a dispute is under examination by the Council or arbitration and for three months thereafter, was accepted as a separate Article (12a) and sent to the Drafting Committee. I may mention here that this proposal was subsequently omitted from the Covenant. As proposed, it read thus:

> To insert at the end of the 1st clause of the Article the following words:
> From the time a dispute is submitted to arbitration or to inquiry by the Executive Council, and until the lapse of the aforesaid term of three months, the parties to the dispute shall refrain from making any military preparations.
>
> Ajouter à la fin du 2e alinéa:
> A partir du moment où le différend a été soumis au Conseil exécutif ou à un arbitrage, et jusqu'à l'expiration dudit délai de trois mois, les parties litigantes ne pourront procéder à des préparatifs militaires d'aucune espèce.

To Article 13 Cecil proposed an amendment defining justiciable disputes in familiar language,[1] now substantially incorporated in the Covenant; by this amendment the first sentence of the Article was to read:

> If a dispute should arise between the States members of the League, as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, if such dispute cannot be satisfactorily settled by diplomacy, the States members of the League recognize arbitration to be the most effective and at the same time the most equitable means of settling the dispute; and they agree to submit to arbitration any dispute which they recognize to be of this nature.

The English minutes state that this Cecil amendment was referred to the Drafting Committee, following Wilson's suggestion that its text "should be revised so as to make clear that the cases enumerated therein were only mentioned as examples, and that the States members of the League might have recourse to

[1] The definition was first formulated by the Bryce Group. See *Schemes for Maintaining General Peace,* by Lord Phillimore, Peace Handbooks, London, 1920, Vol. xxv, No. 160, at pp. 28, 29. See also the Phillimore Plan, Article 3 (Document 1).

arbitration in many other cases not expressly defined." The French minutes show that this was the sense of the meeting, although they add that the amendment was withdrawn.

Such differences in the minutes are an indication of the lack of precision or formality in the proceedings of the Commission, particularly in respect of matters not very contentious. The decision made at the previous meeting to appoint a Drafting Committee had made less important any definite action of the Commission regarding proposals to which no objection was pressed. My notes on this Article, while not complete or very clear, indicate that Wilson's suggestion was in the form of the following remark to Larnaude: "and such other questions of whatever kind as are deemed suitable for arbitration." They also mention that a French amendment was "not pressed." There is no other record of any French proposal at this point; it was perhaps a conversational suggestion of Larnaude.

Hymans also proposed a verbal modification of Article 13; it would have changed the French text in its first sentence by striking out "à leur commune estimation" after "susceptible" and inserting a reference to arbitration treaties, so as to make the sentence read:

> Les Hautes Parties Contractantes conviennent que toutes les fois qu'il s'élèvera entre elles un différend susceptible d'après les conventions existant entre elles ou leur commun agrément, de solution arbitrale, après avoir sans succès tenté de le régler par la voie diplomatique, elles soumettront dans sa totalité la question à l'arbitrage.

The English minutes say that this Belgian proposal was referred to the Drafting Committee and that Committee so regarded it; the French minutes say that it was withdrawn.

To Article 14, the Court Article, Cecil proposed an amendment to insert the following italicized words as to the jurisdiction:

> The Executive Council shall formulate plans for the establishment of a Permanent Court of International Justice and this Court shall, when established, be competent to hear and determine *any dispute or difference of an international character including* any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing Article.

This was pretty sweeping language. I wrote this about it at the meeting:

I meant that the amendment of Lord Robert Cecil has included all questions of an international character. That is an enormous addition to the jurisdiction and is going the whole road to compulsory arbitration.

My notes say the amendment was not pressed; the French minutes make no mention of it except in the Annex; the English minutes say it was adopted. It was treated as adopted, but like all amendments, subject to the later review of the Drafting Committee.

Larnaude made a very interesting suggestion regarding the jurisdiction of the Permanent Court of International Justice; his proposal in full read as follows:

Le Conseil exécutif arrêtera le plan de création d'une Cour permanente de justice internationale; cette Cour, dès son apparation, aura compétence pour entendre et juger:

a. Toute question qui lui serait soumise par le Corps des Délégués ou par le Conseil exécutif.

b. Toute question surgissant de l'interprétation du Pacte établissant la Ligue.

c. Tout différend que, avec l'assentiment de la Cour et du Conseil exécutif, l'une quelconque des parties désirerait lui voir soumettre.

Paragraph (a) of this proposal was quite similar to the words added to Article 14 by Wilson and Cecil on March 18: "and also any issue referred to it by the Executive Council or Body of Delegates". Paragraph (b), as Larnaude stated, was written with the idea of giving the Permanent Court the same sort of jurisdiction over the interpretation of the Covenant as our Supreme Court has regarding the Constitution of the United States. I may mention here that the extent of the jurisdiction of the Permanent Court in this regard is still somewhat debatable.[1] Paragraph (c) went a long way on the road to compulsory arbitration; but indeed this seemed to me the effect also of paragraph (a) and of the corresponding change of March 18 above mentioned.

Now what happened to this amendment of Larnaude is fairly well stated in the English minutes. It was adopted in principle,

[1] However, there is no doubt that in a proper case the interpretation of any Treaty, including the Covenant, might come before the Court. Indeed, in the Mosul case, Advisory Opinion No. 12, the Court considered the meaning of various clauses of the Covenant.

omitting paragraph (b) and altering paragraph (c) so as to refer to *both* parties and not merely to one party, and sent to the Drafting Committee along with the Wilson-Cecil addition of March 18 above mentioned. My notes indicate that only (a) and not (c) of the Larnaude amendment was so adopted; but with paragraph (c) changed so as to mention *both* parties, that paragraph was in substance already in the Article. On the other hand the French minutes say that the Larnaude amendment was withdrawn and do not record any action on the Wilson-Cecil addition, although the Annex to the French minutes contains a translation of the amendment which renders the English "issue" by the French "conclusion."

Finally, a Belgian proposal [1] of a new Article for the creation of special tribunals to construe Arbitration Conventions was withdrawn.

As to Article 15, I can only say that the English minutes are generally correct and the French minutes, in so far as they do not agree with the English, are generally faulty or erroneous. A British drafting amendment [2] was apparently adopted although my records do not show it; the change of March 18 which I discuss below was adopted; two amendments regarding the procedure before the Assembly in the case of a dispute referred to that body were sent to the Drafting Committee. [3] One of these, presented by the French, and was to add as a paragraph:

> Le recours à l'Assemblée des Délégués sera de droit lorsque le Conseil exécutif n'aura pu prendre de décision.

The other was presented by Cecil on behalf of Veniselos who was not present. It would have made the last sentence of the Article read thus:

> In this case, a recommendation made by the Body of Delegates, shall have the force of a unanimous recommendation by the Executive Council, provided that such recommendation is supported by all the States represented in the Executive Council and a majority of the other States represented in the Body of Delegates.

[1] For the text of this, see the Annex to either set of minutes of the Twelfth Meeting.

[2] See the English minutes for this. It changed the word "either" to "any."

[3] Neither in the French minutes nor in my notes is there any mention of action on the French amendment.

This Greek amendment was also proposed in French; in the Annex to the French minutes, however, the correct French text is not given, but will be found in a footnote thereto.

It was Wilson who proposed the change of March 18 in the second paragraph of Article 15. I have described this at some length above [1] and need not repeat what was then said. While the words which were striken out had previously been the subject of much consideration,[2] they were now omitted without debate. Indeed the French minutes make no mention of the change.

Wilson's amendment regarding domestic questions was also accepted and sent to the Drafting Committee with no dissent and little comment.

I may recall here that Taft's suggestion about this amendment was this:

> Add to Article 15 a provision that where the Executive Council or the Body of Delegates finds the difference to grow out of an exclusively domestic policy, it shall recommend no settlement.

As Wilson wrote out his proposal it read thus:

> Add to Article 15 the following paragraph:
> If the difference between the parties shall be found by the Executive Council or by the Body of Delegates to be a question which by international law is solely within the domestic legislative jurisdiction of one of the parties, it shall so report, and shall make no recommendation as to its settlement.

Just why he inserted the word "legislative" before "jurisdiction", I cannot imagine; at any rate the Commission struck it out.

Here Koo made a very interesting suggestion. He proposed to add to this amendment the following words: [3]

> Unless a recommendation is desired by the party within whose exclusive jurisdiction the question lies.

When Koo first put forward this suggestion I do not think its purpose was quite understood. In one of the notes that I was

[1] See p. 290 *sqq.*

[2] See the minutes of the Fifth Meeting relating to Article 13, as then numbered.

[3] I take them in this form from my notes. Mr. Wilson also noted the amendment at the time and I still have the paper which he wrote. The text in the English minutes varies slightly; and the French minutes are very obscure at this point.

accustomed to write to Wilson during the meetings I explained Koo's remarks thus:

> What Koo means is this: *A Party may claim that its domestic jurisdiction is interfered with* and it wants to put the other Party out of its domestic affairs.

The clause was referred to the Drafting Committee, which accepted its principle.[1] It expressed a very natural Chinese reaction. Sentiment in the United States feared that in some vague way under the Covenant there might be some interference with matters American from the outside. The Chinese were thinking more of past interference with Chinese internal affairs by other Powers and wanted to be sure that there was nothing in the Covenant that would form a pretext for the continuance of this interference whenever a favorable opportunity arose for diminishing it.

It should also be mentioned that the British had their own amendment regarding domestic questions, which was on their amendment paper of March 24, but was not brought forward at the meeting, since the adoption of the Wilson proposal in Article 15 covered somewhat the same ground. This British amendment was to add an additional Article reading as follows:

> Nothing in this Covenant shall be deemed to limit the sovereignty of the States members of the League or their right to decide their own domestic policy, except as herein expressly stated.

A Belgian proposal was put forward to give express approval to special agreements between particular States with the object of excluding all possibility of war between them. The text of this in the Annex to the English minutes is incomplete, but the correct text is in the Annex to the French minutes as follows:

> Il sera loisible aux Etats de conclure des conventions particulières destinées à exclure toute possibilité de guerre entre eux, soit qu'ils s'engagent à accepter les décisions rendues à simple majorité par le Conseil exécutif, soit qu'ils conviennent d'un autre mode de règlement de leurs conflits. Pareils engagements seront si les Parties contractantes le désirent, admises sous la sauvegarde de la Société des Nations.

This proposal was withdrawn upon Wilson's statement that such special agreements were authorized by the Covenant, which

[1] See in Document 30 the opening words of the seventh paragraph of Article 15, now the eighth paragraph of that Article.

is, I think, the correct view, despite the doubts on the point expressed by Orlando. Indeed, Hymans' proposal in principle envisaged just such arbitration treaties as some of recent date and also agreements like those of Locarno.

Finally, Cecil proposed in this connection an additional Article for Commissions of Conciliation, the text of which was as follows:

> The Executive council may formulate plans for the establishment of a system of commissions of conciliation and may make recommendations as to the method of employing such commissions in the settlement of such disputes as are not recognized by the parties as suitable for arbitration.

Wilson thought that the Council already had power to name such Commissions, so the amendment was not pressed. It was in accord with proposals of various Neutral Powers, [1] and while Wilson's view was doubtless correct, an express recognition of the procedure of conciliation would probably have been wise and at least would have done no harm.

Article 16, the sanctions Article, was one which the Wilson-Cecil agreement of March 18 had left unchanged from the February 14 text. As it read, the sanctions were applicable only to a breach of Article 12. The French proposed to mention also Articles 8, 13 and 15; the British proposed to include the mention of Article 15 and to this extent only the change was accepted [2] as were also two drafting amendments of the British.[3]

The point as to the applicability of the sanctions in the form in which it was presented seems both trivial and technical. It was, however, of real importance. As the Covenant stood, the sanctions applied only to the breach of an obligation not to resort to war, for Article 12 as then drawn included no other obligation. The French proposal to include a reference to Article 13 would have made the sanctions applicable to enforce an arbitral award or a judgment of the Permanent Court of International Justice. Such a proposal was one of very far-reaching importance and much too drastic and novel to be accepted. The award or the judgment might be for a sum of money, for example, and to say

[1] See Document 25.

[2] See the minutes on this point, especially as to the mention of Article 8.

[3] One of these was in the second paragraph, to insert after the word "recommend" the words "to the several Governments concerned"; and, in the third paragraph, instead of saying "will afford passage" etc. to say "will take the necessary steps to afford passage" etc.

that default in payment would automatically involve such grave consequences as those of the application of Article 16 would be impossible. The analogy of a Municipal Court with its sheriff or similar officer could not be carried to any such length. Even the inclusion of Article 15 went, as a matter of drafting, too far, for, while that Article itself did (and does) include a covenant not to go to war in certain cases, it also, as now, included other covenants. As finally written, Articles 12, 13 and 15 all include covenants not to resort to war; and Article 16 mentions all three of them but *with qualifying* language, making the reference only to a "resort to war" in breach of the Articles named, and not to the Articles generally.

At this point the Commission adjourned for two days until the evening of March 26. Since so many amendments to the Articles considered had been referred to the Drafting Committee without distinct action on the part of the Commission except general approval, it was decided that the usual print of the text as adopted to date should not be distributed at the next meeting of the Commission. Such a text was printed in both English and French during the interval between the meetings; but it was thought that it would be misleading to circulate it in the absence of a detailed explanation of the status of the various changes proposed, with their language.

The Swiss were beginning to think that Geneva would be chosen as the Seat of the League and on March 25 MM. Rappard and Huber handed me a clause which they proposed on this subject which read as follows in the two languages;

> Les clauses concernant le siège de la Société des Nations sont provisoires. Elles devront faire l'objet, d'une convention entre le Conseil Exécutif de la Société et le Gouvernement de l'Etat mentionné à l'article v.
>
> Cette convention fixera les conditions relatives à la protection du siège de la Société. Cette protection pourrait être assurée par le bénéfice de l'exterritorialité du siège et par la reconnaissance de la neutralité permanente (de l'inviolibilité) de l'état où le siège est situé, ou autrement.

> The provisions concerning the Seat of the League are provisional and subject to agreement between the Executive Council of the League and the Government of the Country named in Article v.
>
> In this agreement provision shall be made for the protection of the Seat by the establishment of the extraterritoriality of the

Seat and the permanent neutrality (inviolability) of the country where the Seat is located or otherwise.

My comment on this was that I preferred the French text to English and suggested certain changes.[1]

The Swiss Delegates had also drawn up a very curious proposal regarding immigration. While naturally any such suggestion was utterly impossible from the American standpoint and while nothing came of it, it is interesting as showing the view of a small country in which the percentage of foreign population is normally very large indeed. Accordingly I reproduce it here, remarking that while our own Immigration Law bases its immigrant quotas on percentages of population, these are prior domestic percentages, in contrast with the Swiss idea of existing and, so to speak, reciprocal foreign percentages:[2]

Pour assurer l'égalité de traitement entre les Etats membres de la Société des Nations en matière d'immigration et d'établissement il est disposé ce qui suit:

Aucun Etat n'est tenu à recevoir sur son territoire des citoyens et sujets d'un autre Etat dans une proportion (pourcentage) plus forte, par rapport à sa population, que ses propres resortissants représentent dans la population de cet autre Etat.

In order to secure equality of treatment in matters of immigration and establishment between States members of the League of Nations, the following rule will be applied:

No State is obliged to receive on its territory citizens or subjects of another State in a higher percentage, with regard to its population, than its own nationals represent in the population of the other States.

[1] These were to make the last sentence of the French read thus:

Cette protection pourrait être assurée par la reconnaissance de la permanente inviolabilité de l'Etat où le siège est situé, en tenant compte des dispositions de l'Article XVI en y apportant des modifications qui seraient jugées utiles.

[2] The Swiss gave this example, to show how their idea would work:

	Inhabitants	Nationals of	%
State A	20,000,000	State B 20,000	.01
State B	10,000,000	Nationals of State A 20,000	.02

State B may prohibit (is not obliged to do so) an increase of immigrants from State A beyond .01% (10,000).

CHAPTER XXVII

THIRTEENTH MEETING OF THE COMMISSION

Discussions of a Monroe Doctrine clause continued. On March 25 Sir William Wiseman came to my office and showed me a draft which read as follows:

> Nothing in this Covenant shall be deemed to impair the validity of any international engagement or understanding for securing the peace of the world such as treaties of arbitration and the Monroe Doctrine.

Wiseman said that Mr. Balfour had approved of this draft and asked me my opinion. I told him I thought it was a very good thing to mention the Monroe Doctrine specifically and I suggested some changes in the draft so that it read thus:

> Nothing in this Covenant shall be deemed to affect any international engagement or understanding for securing the peace of the world such as the Monroe Doctrine.

The next day Mr. Wellington Koo came to see me. He mentioned first the question of immigration and asked if the Japanese were going to bring it up again. I said that I did not know. Koo said that the Chinese of course would have to support the proposal if it came up; but that in reality they did not care anything about it in view of the more important interests of theirs which were in question. Koo then asked me about the Monroe Doctrine and said he was in favor of having a recognition of it in the Covenant, but thought that the language should not be so broad so as to include other agreements such as the so-called Japanese Monroe Doctrine. Doubtless he was thinking somewhat of the Lansing-Ishii agreement. I showed Koo two of the drafts that had been suggested [1] and while he was with me I wrote out still another which Koo liked and which I think was undoubtedly the best form of all up to date from the American standpoint. It read thus:

[1] The one last quoted and an earlier draft quoted at p. 323.

Nothing in this Covenant shall be deemed to affect the Monroe Doctrine, which is recognized as having in view the peace of the world.

When I told House about this conversation a little later, he said to let Cecil know about it and see if he would agree. Accordingly, I went over to the Hotel Astoria and saw Cecil and he said that in the first place he did not like my draft as he thought it would be impossible simply to single out the Monroe Doctrine and nothing else and, while he saw no objection to mentioning it, he thought it should be by way of reference. He said, however, that the whole question was in a sense out of his hands; that he had spoken to Mr. Balfour about it, and that Balfour had thought that he should speak to Lloyd George, which he had done, and Lloyd George raised two objections to including any mention of the Monroe Doctrine; first, it would be very hard to explain in Great Britain, where the people would say that so far as America was concerned this was an element embodying concession; and second, he gave the original objection made by the President that a Doctrine specifically applicable to only one part of the world should not be contained in the Covenant.[1] Accordingly, Cecil suggested that the only thing that could be done was for Lloyd George to speak to the President on the subject.

I was unable to report this conversation to Colonel House before the evening meeting as he was resting; but I left a message for him about it at his office. There was of course nothing real in the objections raised by Lloyd George. He cared nothing whatever about the recognition of the Monroe Doctrine; but he was trying to bargain about it so as to get an agreement with Wilson on the subject of naval building.[2]

The minutes of the American Commissioners of March 27 contain a reference to this matter and also to the proposed Treaty of Guarantee for France. The following extracts which I print are of interest for various reasons. Colonel House was not present, so Mr. White recounted to Mr. Lansing and General Bliss the information which Colonel House had imparted to him:

Mr. White stated that he had just had a conference with Colonel House, and that he later had given him certain bits of information with regard to the President and the President's atti-

[1] As to this, *Quære?*
[2] See Chapter xxx.

tude upon certain current questions. The President had been unable to have the proposed amendment with regard to Article 10 of the Covenant of the League of Nations passed which safeguarded the Monroe Doctrine because Lloyd George was opposed to it. Lloyd George felt that the insertion of such an Article would be giving to the United States a special prerogative, and would likewise localize the League of Nations. Moreover, Lloyd George had not yet been able to reach a satisfactory agreement with the President in regard to the ship-building program of the two countries, and that was undoubtedly his fundamental objection to making a concession to the United States. Colonel House had observed that in view of the fact that Lord Robert Cecil and Mr. Balfour were both willing to pass the amendment in question, the President had decided to see Mr. Lloyd George personally in the hope of getting him finally to consent to it.

Mr. White observed that through Colonel House he had learned that the President appeared to be in favor of giving to France the guarantee which she desired through a triple alliance. England was resolved to give this guarantee whether the United States did or not. Mr. White said that he told Colonel House that in the opinion of the other three Commissioners such an alliance would be extremely unfortunate, and absolutely fatal to the success of the League of Nations. Colonel House had replied that he would bring this view to the attention of the President.

So the Monroe Doctrine clause went over for further negotiations. It was not mentioned at the Thirteenth Meeting of the Commission, on March 26, which got through with the text and sent it to the Drafting Committee, consisting of Cecil, Larnaude, Veniselos and House. Another Committee was appointed to consider the location of the Seat of the League; this consisted of Orlando, Smuts, Makino and House.

The Thirteenth Meeting of the Commission did not, as to most of the Articles considered, do very much except approve most of the changes which had been agreed upon between Wilson and Cecil on March 18 [1] but some additions were made. However, as any one seeking to trace the proceedings in detail would find great difficulty in following them from the minutes, I summarize the results here:[2]

Article 17 was adopted with the slight changes agreed to on March 18.

In Article 18, as numbered in the new draft (formerly 19),

[1] For these see Document 24.

[2] My own notes are not reproduced as they contain nothing not elsewhere stated.

the mandates Article, Cecil proposed two changes. In lieu of the added paragraph of March 18 regarding the acceptance of a Mandate, the words "and who are willing to accept it" were inserted in the second paragraph. The other proposal which was sent to the Drafting Committee was to recast the eighth paragraph of the Article so that it should read:

> The nature of the mandate to be given to the mandatory State in each case may, if not previously agreed upon, be settled by the Executive Council.

The new Article 19 (18, 20 and 21 in the February 14 draft) was proposed by the British [1] in an expanded form as follows:

> In accordance with the provisions of international conventions hereafter to be agreed upon for the purposes hereinafter stated, the States Members of the League
>
> (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend.
>
> (b) engage to secure just treatment of the native inhabitants of the territories under their control.
>
> (c) entrust the League with the general supervision over the execution of such agreements as shall have been jointly come to with regard to the traffic in women and children and traffic in opium and other dangerous drugs.
>
> (d) agree that the League shall be entrusted with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest.
>
> (e) agree that provision shall be made to secure and maintain freedom of communications and transit and equitable treatment for the commerce of all States members of the League, having in mind, among other things, special arrangements with regard to the necessities of the regions devastated during the war of 1914-1918.

While this embodied, with a few very slight changes, the provisions of that Article as Wilson and Cecil had agreed upon it on

[1] Various British proposals were on the table in their amendment paper. They are set forth in the text *passim*. A French version was also circulated by the British; I reprint it as Document 26, chiefly for the reason that a comparison of the French therein with the French of the same amendments as given in the Annex to the French minutes of the Twelfth Meeting will show beyond debate that the language in which the amendments were really proposed was English.

March 18, the clauses regarding just treatment of native inhabitants and the supervision of Treaties regarding the White Slave Traffic and the Drug Traffic were added. This proposal was accepted; but the Drafting Committee was instructed to take into consideration the question as to whether the International Bureau of Labor should be mentioned [1] or not in clause (a). My notes also say this regarding this Article:

> The Drafting Committee must be careful to see that Treaties mentioned are not to include any but the parties to them.

What was meant was that the language should be so drawn that it would not be open to the construction that Treaties on the questions mentioned in the Article bound any but the ratifying parties.

In an early draft of the English minutes, the account of the discussion of this Article is somewhat fuller than as finally written, so I insert it here:

> Lord Robert Cecil explained that as the Draft originally read, Articles XVIII, XX and XXI were rather bare, and that they would be better as reprinted in the new Article XIX.
>
> M. Vesnitch asked what was the meaning of the words in paragraph (a) "and in all countries to which their commercial and industrial relations extend." He thought that this implied that States would have the right of interfering in the internal affairs of other States, and this was inadmissible.
>
> President Wilson explained that influence only on a friendly and legitimate scale, and not intervention, was meant.
>
> M. Reis said that he thought that the words "general supervision" in paragraph (d) were too strong.
>
> Lord Robert Cecil explained that the supervision was to depend upon subsequent international agreements.
>
> He stated that it was Mr. Barnes' view with regard to paragraph (a) that no details should be entered into as to the means by which the objects of the clause should be attained; it was for this reason that he proposed to conclude the paragraph at "extend."
>
> President Wilson asked whether this was the general view of Labour and it was agreed that Lord Robert Cecil should find out, and that the matter should be referred to the Drafting Committee for further consideration.
>
> In reply to a question by Baron Makino,
>
> Lord Robert Cecil explained that agreements with regard to the White Slave and Opium traffics were already in operation.

[1] See the text in Document 24.

M. Hymans asked whether negotiations were proceeding with regard to (c) and (d),

Lord Robert Cecil thought that semi-official preparations were in process.

Article XIX was accepted as amended except in the matter of the insertion in paragraph (a) of the words "by means of an International Bureau" after "endeavour" which is to be the subject of discussion by the Drafting Committee.

Baron Makino asked what would be the position of States which failed to ratify any of these Conventions.

President Wilson replied that their only obligation would be to see to it that subscribing States kept their obligations thereunder.

The British also proposed considerably to expand Article 20 (formerly 22). With their amendments that Article would have read thus:

> The States Members of the League agree to place under the control of the League all international bureaux already established by general treaties if the parties to such treaties consent. Furthermore, they agree that all such international bureaux *or all commissions for the regulation of matters of international interest* to be constituted in future shall be placed under the control of the League.
>
> In all matters of international interest which are regulated by general conventions but which are not placed under the control of special international bureaux or commissions, the secretariat of the League shall act as a central organization for the collection and distribution of information and for securing the effective observance of such conventions [1] if the States thereto consent.
>
> The expenses of all such bureaux and commissions, including those provided for by this Covenant, may, with the consent of the Executive Council, be treated as part of the expenses of the permanent Secretariat of the League.

The first paragraph of this proposal was the draft of February 14 with the italicized words inserted; the second and third paragraphs were new. With one change and one reservation, the Article as proposed was passed. The change was that the words at the end of the second paragraph "and for securing the effec-

[1] So the English minutes read; but in the British amendment paper the word was "parties." In the earlier draft of the English minutes, as in the French text of the British amendments (Document 26) the last five words do not appear.

tive observance of such conventions" etc. were stricken out, because they gave entirely too much power to the Secretariat. The reserve was regarding the third paragraph. During the meeting I had written to Wilson about the British proposal that I thought the machinery went too far; and on his suggestion the Drafting Committee was to consider whether the language was not too inclusive. The idea is now in a modified form the third paragraph of Article 24 of the Covenant.

Articles 21, 22 and 23 were accepted as in the March 18 Draft, the same as in the text of February 14, except for the numbering (then 23 to 25).

A real discussion took place over Wilson's Article regarding withdrawal. It came up in connection with Article 24 (formerly 26) which provided for the amendment of the Covenant by three-fourths of the Members of the League, including all the Powers on the Council. Cecil proposed to change "three-fourths" to "a majority" and Wilson then introduced his withdrawal amendment which I reprint here:

> After the expiration of ten years from the ratification of the Treaty of Peace of which this Covenant forms a part, any State a member of the League may, after giving one year's notice of its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

The French reaction to this proposal was not exactly what had been expected. While Larnaude objected to the clause, he objected more to the fixing of a ten year period preliminary to any right of withdrawal than to the right of withdrawal itself; and Bourgeois was even willing to accept withdrawal on two years' notice *if* the ten year period was eliminated. The difference in the point of view between the American legal mind here and the French legal mind is very striking. We would say that a clause binding the parties absolutely for ten years and then giving a right of withdrawal on notice was more stringent than a clause simply giving a right of withdrawal on notice. I venture to say that to the average English or American lawyer such a proposition would seem to be beyond debate. The reasoning, however, is wrong, because it looks more at words than at the psychology of human beings. As the continental jurists pointed out, the fixing of a ten year period would be regarded by the world as a trial term at the end of which the League would presumably break

up, or at least might break up; and Bourgeois said, regarding the draft which he suggested, which read thus:

> Nul Etat faisant partie de la Société des Nations n'a le droit de s'en retirer sans s'être acquitté de ses obligations et sans un préavis de deux ans.

and which according to our point of view would give an almost unqualified right of withdrawal on two years' notice, that it consecrated the principle of perpetuity and at the same time maintained the right of withdrawal. I believe his observation to be fundamentally sound; events indeed have almost proved it. Under the existing provisions, withdrawal from the League is a very serious matter, to be raised by a State for very special reasons only, peculiar to itself, and subject to discussion and reasoning and perhaps retraction of resignation.[1] If there were a definite binding period applicable to all States it might very well, as Orlando suggested, bring about a collective suggestion of more or less general withdrawal. Indeed, one of Orlando's later phrases seems to me of very high rank among diplomatic *bons mots:* "L'important n'est pas tant d'être libre que de se croire libre." His whole remarks here, as the French minutes have them, are worth quoting:

> La liberté est essentielle dans toutes les manifestations humaines. Mais l'important n'est pas tant d'être libre que de se croire libre. Si les Etats ont la conviction qu'il leur suffit de donner un préavis pour sortir de la Société, il est bien vraisemblable qu'ils n'useront pas de cette faculté. Au contraire, s'ils ont l'impression qu'ils portent une chaîne, il pourra se produire des ruptures brutales. Sans doute, comme le dit M. Larnaude, nous voulons fonder un nouveau droit, mais il faut pour cela plus qu'un traité et qu'une déclaration. Il faut créer des moeurs, des habitudes, une force intérieure qui soutiennent l'édifice que nous construisons. La fixation d'un délai de dix ou vingt ans paraît contre-indiquée au point de vue psychologique: mieux vaut ne pas assigner un terme à la Société et admettre simplement la faculté réglementée de s'en retirer.

The French minutes should be specially consulted, as they contain portions of the discussion much more fully than do the English. Both versions, however, are supplemented somewhat by the earlier English draft from which the final English minutes were condensed. It is quite natural that the remarks originally made

[1] The agitated debates regarding the entrance of Germany into the League, following Locarno, are in point here.

in English are more fully set out here than elsewhere. The relevant portion of this earlier draft here follows:

> Lord Robert Cecil proposed an amendment as follows:
> Line 2 delete "three-quarters" and substitute "a majority."
> It had been represented to him from many quarters that the necessity of amendments being carried by a three-quarters majority would give the League too rigid a character. He considered that the proposed amendment would make no great difference, but that it would remove the impression which existed that the Covenant was to be unalterable.
> M. Venizelos did not agree; he considered that the smaller Powers had already given up a great deal of authority, and that the proposed amendment would expose them to the risk of losing still more. He asked Lord Robert Cecil to take into consideration the feelings of the Neutral States, many of which were already nervous.
> At this point President Wilson said that he thought that the subject under discussion depended upon an amendment of his own, which he asked leave to introduce.
> Lord Robert Cecil accordingly agreed that the discussion of his amendment should be deferred.
> With reference to his amendment, which read as follows:
>
> > "After the expiration of 10 years from the ratification of the Treaty of Peace of which this Covenant forms a part, any State, a member of the League, may, after giving one year's notice of its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal",
>
> President Wilson said that the United States Senate insisted that the right of withdrawal should be explicitly stated. Ten years seemed to him to be a suitable time limit. He thought that if the League was successful, it would be morally impossible for a State to withdraw, while if it was not successful, it would not matter.
> M. Larnaude said that we should astonish the world if we said merely "we are going to make an experiment for ten years." The world wanted something definite. The essence of the idea of the League is that it is to be a permanent thing. The placing of a ten years' time limit would give the idea that the success of the League was not hoped for. The League was not like a syndicate of individuals. It was a new departure, which was to harmonize international relations, prevent war, etc. He hoped

most earnestly that all we have done for the League was not to be thrown away after ten years.

President Wilson said that he had no idea of limiting the duration of the League. Sovereign States could not permanently be bound. Ten years would safeguard their rights.

Lord Robert Cecil said that he agreed with M. Larnaude that it would be fatal if the impression was given that we thought that the League would not be a success. On the other hand, Treaties in the past have suffered from the fact that it has been taken for granted that they were to be permanent. It was foolish to suppose that any Treaty could be permanent. He had always been in favour of giving Treaties a definite time limit and of making them renewable. He doubted whether ten years sufficed. The effects of the war would only be beginning to pass off in ten years. He suggested twenty, or fifteen or sixteen years. He thought that it was of great importance that we should bind ourselves to make an effort to secure a lasting League. He thought, moreover, that if a less period than twenty years was fixed then two years' notice ought to be given, while if twenty years was decided upon, then one year would suffice. He would prefer twenty years.

Signor Orlando said that he thought that the possibility of retiring should be left. M. Larnaude's objection could be met within the text. The proposal to fix a definite time limit had the disadvantage that all withdrawals might come together. He considered that President Wilson's amendment should be accepted with an additional amendment, so as to mean that any member might withdraw after two years' notice.

President Wilson said that he would abandon the time limit and substitute two years' notice.

M. Larnaude was not convinced. He thought that it was being assumed that the League was going to be something tyrannical and that States would be anxious to get out of it. This impression might produce very serious effects. Countries not belonging to the League might ally themselves against it. We wanted, not to make a Treaty on the old lines, but to strike out a new line and provide a substitute for the old order of international relations. He thought that giving notice by a Great Power would throw the League into confusion. While we are trying to establish the League, let us be thorough.

President Wilson said that he did not entertain the smallest fear that any State would take advantage of the proposed clause. Any State which did so would so become an outlaw. It would be breaking up an arrangement on which we must assume that the world has set its heart.

The sovereignty of their own country was the fetish of many

public men. If they entered into a permanent arrangement they would feel that they were surrendering this sovereignty; the most precious thing they had, the thing for which they were willing to fight and to lay down their lives.

Too technical an aspect should not be given to ideas which were sound at bottom. He blamed lawyers for having given too rigid an interpretation to international agreements in the past.

America was keener on her sovereignty than most countries. Americans would have to be assured that they were not permanently giving up the sovereignty of their State.

He thought that the clause would have no practical effects, while its omission might have very serious results. The time would come when men would be just as eager partisans of the sovereignty of mankind as they were now of their own national sovereignty.

It was necessary to give way to current prejudices, but he thought that the initial obstacle which lay in the way of the League, the idea that nationality came before international co-operation, might be overcome. We should make concessions to a sense of independence of will. We must not give the people the chance of saying that we were surrendering it forever.

He himself would be in a very singular, a very awkward position if the amendment was not passed, as he had himself been in a minority of one in the earlier meetings of the Commission as an anti-secessionist. He had never been a believer in secession, though he came from a Southern State.

No State having entered would have a moral right to withdraw, since by entering it would have conferred a benefit upon mankind. States would have a legal right, that was all that he proposed to admit.

He had assured his colleagues in America that everyone took it that the right to secede was assured. He was afraid that the Senate would not come in if they thought that they had not got it.

M. Bourgeois said that all that was wanted was not to fix a definite time limit. There should be a negative instead of a positive formula: something of the following kind:

> "No State may withdraw without being quit of its obligations and having given notice."

This would leave the right to withdraw, and would also ensure that states might not do so except on terms that would not damage the League.

Lord Robert Cecil said that the rule of International Law was that if no definite term was fixed withdrawal was illegal. Denunciation was illegal unless expressly provided for.

President Wilson recapitulated the arguments in favour of a positive term for the benefit of the French authorities.

M. Larnaude said that for some time past national sovereignty had been a fiction. The question of the cessation of military service was one which was keenly discussed in every hamlet, in every cottage, in all France. If the people of France thought that the League was to last ten years only, they would think that it was already bankrupt. He repeated his assertion that the League was not an ordinary Treaty.

M. Vesnitch said that the quintessence of the League was that it was to be a League of Liberty. It should be as elastic as possible. The properties of an ideal organization should be retained. No chains should be laid upon States entering the League. The same questions as the President stated would be asked in America would be asked in many countries.

M. Reis said that we had already been widely accused of having laid violent hands upon national independence. We should do all that we could to remove that impression.

Signor Orlando said that the Meeting was in agreement that the general delay should be abolished.

M. Venizelos said that the Meeting did not agree. He wanted a term of twenty years fixed, but he would accept fifteen or even ten. The essential thing was that some security should be obtained.

M. Larnaude said that he thought that the term should be suppressed. Nations leaving the League should be compelled to say why.

Signor Orlando said that motives would always be found. He thought that liberty of action was essential. He himself lived the life of a prisoner. The difference was that he did it voluntarily. M. Larnaude had said that we were going to establish a new conception of Right. If we were going to do that, we must have confidence.

President Wilson agreed with M. Larnaude's hopes and ambitions. We must make a start. If the Senate was not given a chance of retiring, the difficulty of inducing them to come in might be so great that it would be impossible to start the League. Once it was started he was convinced that the United States would stay in till the last.

M. Bourgeois adhered to the principle that Nations should have to find justification for leaving the League.

M. Venizelos agreed that two years' notice without a time limit would suffice.

M. Vesnitch thought that it would not be necessary to retain the clause compelling retiring members of the League to have fulfilled their obligations.

The result was the adoption of the withdrawal clause in the following form:

> Any State, a member of the League, may, after giving two years' notice of its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Thereupon Cecil's proposal for amendment of the Covenant by a simple majority of the Members (including those on the Council) in place of a three-fourths majority was accepted without further discussion, although Veniselos had originally opposed it.

Another British amendment, for an additional Article regarding the appointment of women to the Secretariat etc., was accepted. As proposed it was in this rather bare form:

> All bodies formed under or in connection with the League, including the Secretariat, may comprise women as well as men.

There was little discussion of the point, although according to the French minutes Cecil referred to some British decision in which it had been held that women were not within the terms of a Statute unless expressly named. As to this I wrote "It is a rule of English Law, not International Law, that women are excluded if not named." Finally there was a general assent to the proposal for the appointment of a Committee on the organization of the League; but no action was taken in this regard till later.

The minutes are very much mixed regarding certain French proposals at this meeting, none of which, however, was pressed. These proposals will be found correctly printed in the Annex to the French minutes of the Twelfth Meeting. The first of them was to recast and extend the language of Article 20 (in the old numbering) relating to labor; the second was *in form* an amendment to Article 21 (old numbering) which concerned freedom of transit and equitable treatment of commerce. The French amendment, however, would have included industry as well as commerce,[1] and also added various clauses;[2] the first of

[1] As to this, I wrote at the meeting: There is not any international *industry; labor* is already provided for.

[2] My summary of these, as I wrote it at the meeting for Wilson was:

> 1st paragraph looks toward a joint *post-war budget* of the States.
> 2nd paragraph provides an international organization of production.
> 3rd paragraph is a provision for property protection of the property of foreigners.

these, while ambiguous, looked toward the readjustment of the Interallied debts; then followed a paragraph for the international organization of production and finally a provision for protection of the property of foreigners. Furthermore the French proposed a new Article (21 bis) for an Economic Section of the League.

Perhaps in part because of the fact that the former Articles 20 and 21 had, with 18, been combined in a new Article (19) both sets of minutes are very obscure here. The French minutes (aside from the Annex to the Minutes of the Twelfth Meeting) give in part the text of only one of the three proposals and say nothing about the text of the other two, although the discussion is pretty well reported and includes the remarks on the Belgian proposal for a permanent Commission on Agriculture, of which the English minutes make only a brief mention. On the other hand, where the English minutes refer to two of the proposals of the French, they do not state their purport correctly, and they hardly reproduce the discussion at all; and where the debate is given it is wrong. Wilson's remarks about the Flag and the Dollar, if they are reported with entire correctness in either set of minutes, which is highly doubtful, had nothing whatever to do with the creation of an Economic Section of the League, as is indicated in the English minutes. They related to the last paragraph of the second French proposal [1] which contemplated protection of the property of foreigners (e. g. American property in Mexico). In the earlier draft of the English minutes Wilson's statement is given as follows:

> President Wilson said that he thought that the proposed new clause admitted a most dangerous principle, which was known in his country as the principle that "the Flag follows the Dollar". In his opinion no Government ought to support its nationals in claims to the detriment of the country against which the claim is made. He held that the League should be on its guard against accepting principles of this kind. Since he had had anything to do with the Government of the United States it had refused to support capitalists who had made investments abroad which were unreasonable and which gave them an undue advantage over the country concerned.

Two Belgian suggestions were made, only to be withdrawn. One was for the creation of a permanent Commission on Agri-

[1] See Annex to the French minutes of the Twelfth Meeting, amendments proposed by the French Delegation, Article 21, last paragraph.

culture. As the French minutes show, Orlando pointed out that the functions suggested for such an organization were already performed by the International Institute of Rome. The Belgians also had on their amendment paper an Article for an International Commission on Intellectual Relations, an institution which the League has since created. The text of the Belgian amendment was this:

> Les Etats associés assureront, dans la plus large mesure possible, le développement des relations internationales, morales, scientifiques et artistiques entre les divers peuples et prouveront, par tous les moyens, la formation d'une mentalité internationale.
>
> Il est créé, à cette effet, une Commission internationale de relations intellectuelles.

There seems to have been no discussion of the proposal; the minutes do not mention it at all, though the early draft of the English minutes says that it was brought forward and withdrawn.

Just before the adjournment of the meeting, which took place at 11:15, Bourgeois again [1] brought up the two French amendments for an International General Staff etc., and asked for a vote on them; but on the urging of Orlando, Cecil, Veniselos and Vesnitch this troublesome question again went over. An account of this episode appears in some detail in the French minutes. The English minutes make no more than a bare mention of it; but the account of the conclusion of the meeting in the earlier draft of the English minutes read thus:

> President Wilson said that revision was now to be undertaken by the Committee on Revision, consisting of Lord Robert Cecil, M. Larnaude, M. Venizelos and Colonel House.
>
> Lord Robert Cecil said that the League of Nations would soon be a part of international law. It was important that it should start work at once. He thought that a small Committee on organization should be appointed at once, to consider questions such as the housing of the League Secretariat, etc.
>
> M. Bourgeois asked whether the Commission would have another opportunity of going into the question of limitation of Armaments, etc.
>
> President Wilson said that the matter had been several times discussed, and that it was useless to discuss it again.
>
> M. Bourgeois wanted the question to be put to the vote.

[1] See p. 319 *sq.* and p. 324 *sq.*

Signor Orlando beseeched M. Bourgeois not to press the matter; a vote might have most regrettable consequences.

Lord Robert Cecil said that taking the vote might be deferred until the next meeting.

M. Venizelos said that he did not think the question was one for the Commission.

As I intimated above, one result of these three March meetings of the Commission was that the Drafting Committee became in fact a Committee on Revision, as indeed Wilson called it when he named its members.[1] A curious incident occurred in this connection. Wilson was on his feet and the words naming the Drafting Committee from among those who had served previously (Cecil, Veniselos, Bourgeois or Larnaude, Hymans and Vesnitch) were seemingly almost spoken when a slip of paper with four names on it was passed in front of him on the table. Glancing down at it, he changed the almost uttered words and included Colonel House without any perceptible hesitation or pause and even with a polite and complimentary expression of reasons.

Colonel House told me at the time that I was to take his place on the Drafting Committee; and Cecil said to me that he hoped that the Committee would interpret their duties liberally, as much had to be recast and changed; and I agreed that I would confer with Hurst about the text as soon as I had had an opportunity to go over it myself.

I mention occasionally the "Draft of March 26"; it may be said, however, with a good deal of truth that technically there was no such Draft. Going back to the Covenant of February 14, which was officially the basis of the work of the Commission during their three March meetings, what had happened was that most of the changes agreed to between Wilson and Cecil on March 18 had been accepted either in form or in substance; and quite a number of other changes had been accepted, generally in principle, and had been referred to the Drafting Committee together with various questions about the text which had come up at the three meetings. The task of that Committee was really to recast the text in the light of the discussions and in accordance with their own views; and preliminary to the work of the Committee was the preparation of a complete draft for them to work with; for the language of a paper can never be written by a Committee. All that a Committee can do collectively is to change

[1] The minutes generally call it the Drafting Committee, so I use that name.

a draft before it; the writing of a draft is almost invariably done by one individual, sometimes, with difficulty, by two; hardly ever by any more.

As a preliminary to such a preparatory draft for the Drafting Committee, there were printed English and French texts designed to show the draft of March 26 so far as it was considered that that draft could textually be shown. In other words, the language was subject to various decisions taken or questions raised by the Commission which were not textually included. For the sake of completeness and because this draft of March 26 must occasionally be referred to, I reprint its English text as Document 27. The equivalent French I omit; even the English print was not generally used or even generally circulated; it was intended chiefly to aid in the work of the Drafting Committee.

There was prepared by Mr. Shepardson an elaborate list of all the references to the Drafting Committee during these three March meetings of the Commission. Such of these as were *not* textually included in Document 27 are as follows:

Article 6: The suggestion of Larnaude to use the word "inviolability" instead of "extraterritoriality".

Article 11: The amendment of Larnaude to permit an immediate session of the Council in case of urgency.[1]

Article 12: The French and British amendments.[2]

Article 13: The British amendment defining "justiciable disputes."[3] with Wilson's suggestion about it. The Belgian amendment.[4]

Article 14: British and French amendments regarding the Permanent Court of International Justice.[5]

Article 15: The French amendment and the Greek amendment relating to the procedure before the Assembly;[6] also the proposal of Wellington Koo regarding the qualification of Wilson's amendment concerning domestic questions.[7]

Article 18: The British amendment to recast the eighth paragraph.[8]

[1] Quoted p. 325.
[2] These are discussed *supra*, p. 326.
[3] See p. 327 *sq.*
[4] See p. 328.
[5] These are discussed and quoted at p. 328 *sqq.*
[6] See p. 330 *sq.*
[7] See p. 331 *sq.*
[8] See p. 339.

Article 19: The question as to whether in clause (a) the International Bureau of Labor should be mentioned.[1]

Thus it may be said that the English text sent to the Drafting Committee was Document 27, *subject to the above references;* but in its work, as will be seen, the Drafting Committee went somewhat beyond these limits.

[1] See p. 340 *sq.*

CHAPTER XXVIII

FURTHER CRITICISMS

PRIOR to the discussions and work of the Drafting Committee there were received and considered various important criticisms of the Covenant of February 14. Some of them influenced the form of the pending revision. None of them of course took into account any of the changes that had already been made in the Covenant of February 14 by which indeed some of their suggestions had been anticipated.

First to be mentioned here are two Dominion criticisms which had been circulated at the Thirteenth Meeting of the Commission on the League of Nations on March 26.

The Memorandum of Sir Robert Borden, dated March 13, which follows, was written by an advocate of the League and in a spirit of helpfulness.[1] It contained a significant expression of the Canadian opposition to Article 10, an opposition, however, which was founded *in part* on a very general misconception of the legal effect of that Article as written. It is erroneous to suppose that Article 10 includes the idea that "all existing territorial delimitations are just and expedient"; for the principle of Article 10 here is merely that forcible annexation shall not result from "external aggression." Nor is there, in my opinion, any inconsistency between the Articles of the Covenant regarding arbitration etc. on the one hand and Article 10 on the other.

1. This Memorandum has been prepared with a full appreciation of the valuable work accomplished in presenting to the world concrete proposals for the establishment of the proposed League. It has been undertaken also with at least a partial understanding of the difficulties encountered by those responsible for the framing of the Covenant.

2. It will be agreed that in the form of expression simplicity, clearness and directness should be sought and that prolixity and ambiguity should be avoided as far as possible.

3. It will be agreed also that in substance, the provisions

[1] The memorandum quoted each Article of the Covenant of February 14 in full. These are here omitted.

should be effective and practicable; but necessarily the draftsman must continually bear in mind the reluctance of each nation to relax control of matters within the scope of its sovereignty.

4. In the following proposals, attention has been given to both form and substance; but there has been an endeavour to adhere as closely as possible to the language as well as to the purpose and scope of the Covenant as drafted.

5. In cases where the reason of the proposed emendations seems fairly clear and obvious, the draft of an amendment is submitted. In other cases the memorandum submits suggestions or points out difficulties.

ARTICLE I

Proposed amendment: The action of the High Contracting Parties under this Covenant shall be effected through the instrumentality of a Body of Delegates, of a Council, and of a permanent Secretariat.

Reasons for amendment: Unnecessary words are omitted, the meaning remaining unchanged. The Council is not really an executive body.

ARTICLE II

Proposed amendment: The Body of Delegates shall consist of representatives of the High Contracting Parties each of whom shall have one vote and not more than three representatives. Meetings of the Body of Delegates shall be held at stated intervals and also as occasion may require at the Seat of the League or elsewhere as may be determined from time to time.

The Body of Delegates, in addition to any powers or duties expressly or impliedly conferred or imposed by this Covenant, shall report upon any matters submitted to it by the Council, and may also of its own motion, make recommendations to the Council respecting any of the matters set forth in the Preamble.

Reasons for amendment: (a) Unnecessary words are omitted; (b) the order of expression is changed so as to conform with Article III; (c) the Body of Delegates is established by language corresponding to that employed in Article III; (d) the general powers and duties of the Body of Delegates should be expressed.

ARTICLE III

Proposed amendment: The Council shall consist of representatives of the United States of America, the British Empire, France, Italy and Japan, together with representatives of four

other States members of the League to be selected by the Body of Delegates. Pending such selection representatives of shall be members of the Council.

Meetings of the Council shall be held at least once a year and also as occasion may require at the Seat of the League or elsewhere as may be determined from time to time.

The powers and duties of the Council shall extend to all matters within the sphere of the League as defined in this Covenant and generally to all matters affecting the peace of the world.

If the direct interests of any State are to be considered at any meeting of the Council, such State shall be requested to send representatives to such meeting; otherwise no such State shall be affected in respect of such interests by the conclusions reached at such meeting.

Reasons for amendment: (a) Unnecessary words are omitted; (b) the order of statement is made to conform with Article II; (c) the definition of the powers and duties of the Council is separated from the minor question of arranging the meetings; (d) the last sentence has been amended so as to avoid the possibility that every Power must receive notice to attend every meeting; (e) the word "binding" seems inappropriate.

ARTICLE IV

Proposed amendment: The Body of Delegates and the Council respectively shall have power, by a majority of the States represented, to regulate from time to time the procedure at their meetings.

The first meeting of the Body of Delegates and of the Council shall be summoned by the President of the United States of America.

Reasons for amendment: (a) Omission of unnecessary words, etc.

ARTICLE V

No amendment is suggested.

ARTICLE VI

No amendment is suggested.

ARTICLE VII

Proposed amendment: Membership of the League is limited to fully self-governing countries including Dominions and Colonies.

Admission to the League of States not Signatories to the Covenant and not named in the Protocol hereto requires the assent of not less than two-thirds of the States represented in the Body of Delegates.

No State shall be admitted to the League unless it has effectively demonstrated its sincere intention to observe its international obligations, and unless it conforms to such principles as may be prescribed by the League.

Reasons for amendment: (a) Omission of unnecessary words; (b) a more direct and orderly statement.

Observations: The Article is obscure in not defining the authority which shall prescribe the principles to which the State seeking admission must conform. The intention would be clearer if the words "through the Council" were added at the end of the Article.

ARTICLE VIII

No attempt has been made to redraft this Article as it would involve important considerations of policy on the part of each State. The objections to the Article in its present form are, however, obvious; (a) The different forms of expression employed may lead to confusion. "National armaments" first appears; then follows "military equipment and armament"; and lastly we find "munitions and implements of war." (b) The Council is to formulate plans for effecting reduction; but there is no suggestion as to the action proposed for putting such plans into execution; unless, (c) the second sentence of the first paragraph is intended to set forth the action to be taken upon such plans when formulated. If so, the draft is confused and redundant. (d) The expression "when adopted" in the second sentence is ambiguous. Are the limits to become effective when adopted by the Council itself or when adopted by the Government of the State in question? Possibly the ambiguity may be intentional; but it is submitted that any ambiguity in so important a document is unfortunate. (e) If the Council is merely to recommend, there should be a clear statement to that effect. If on the other hand the Council is to determine absolutely, then the expression should be equally clear. (f) The second paragraph gives the impression of a weak attempt to control the production of munitions and implements of war. Whom is the Council to advise, and how and by whom is its advice to be carried into effect? If it is merely to recommend or if on the other hand it is to act, the statement should be in either case clear and unambiguous. (g) The concluding paragraph seems equally weak and ineffective.

ARTICLE IX

Observations: It would be useful to provide that the Commission shall have such powers and duties for the purpose mentioned as the Council may determine.

ARTICLE X

Observations: It is submitted that this Article should be struck out or materially amended. It involves an undertaking by the High Contracting Parties to preserve the territorial integrity and existing political independence of all States members of the League. The Signatories to the Covenant are called upon to declare (a) that all existing territorial delimitations are just and expedient, (b) that they will continue indefinitely to be just and expedient, (c) that the Signatories will be responsible therefor. The undertaking seems to involve initially a careful study, consideration and determination of all territorial questions between the various States who become parties to the Covenant. Even if such a survey were practicable it is impossible to forecast the future. There may be national aspirations to which the provisions of the peace treaty will not do justice and which cannot be permanently repressed. Subsequent articles contemplate the possibility of war between two or more of the Signatories under such conditions that the other Signatories are not called upon to participate actively therein. If, as a result of such war, the nation attacked occupies and proposes to annex (possibly with the consent of a majority of the population) a portion of the territory of the aggressor, what is to be the operation of this Article? Indeed the Article seems inconsistent with the provisions of Articles XII to XVII inclusive. Obviously a dispute as to territory is within the meaning and competence of the six Articles last referred to, under which a disposition of the dispute materially different from that proposed by Article X might be reached. Article XXIV does not seem to remove the difficulty.

ARTICLE XI

Proposed amendment: Any war or threat of war, whether immediately affecting any of the High Contracting Parties or not, is hereby declared a matter of concern to the League, and the High Contracting Parties declare it to be their right and duty to take any action that may be deemed wise and effectual to safeguard the peace of nations.

It is also declared to be the friendly right of any High Contracting Party to draw the attention of the Body of Delegates or of the Council to any circumstances which threaten to

disturb international peace or the good understanding between nations upon which peace depends.

Reasons for amendment: (a) Explicit declaration of right and duty. (b) Omission of unnecessary words.

ARTICLES XII, XIII, XV, XVI AND XVII

Observations: Clearly it is not within the competence of any human power absolutely to prevent war. Therefore the framers of the Covenant have wisely availed themselves of the best means of reducing to a minimum the possibility of its outbreak. The means selected are discussion, publicity and mediation. As President Wilson has truly said, there is force in the background, but only in the background. It is a Covenant of peace and not of war. If the Great Powers of the world had been parties to such a Covenant in 1914, humanity would have been spared the horror and sacrifice which have been endured in the past five years.

Even if the provisions of these five Articles were more open to criticism than is apparent, one would hesitate to suggest any amendment lest the proposal might lead to differences which would prevent the adhesion of nations whose support and concurrence are of vital importance. The following observations are therefore put forward with the reserve which prudence clearly dictates under the circumstances:

First. It is submitted that the form of expression could be improved in clearness and directness through the aid of a skilled draftsman and without in any way modifying the meaning intended.

Second. As the dispositions of these five Articles permit war under certain conditions without any breach of the Covenant, it is advisable to consider whether the proposed Signatories would concur in additional safeguards; or, failing that, whether further provisions to prevent the continuance of such a war and to control its results might not be advisable.

Third. The circumstances in which war might break out without breach of the Covenant are, *inter alia,* the following: (a) The arbitrators fail to make an award. (b) The arbitrators fail to make an award within a reasonable time. (c) The Council or the Body of Delegates fail to make a recommendation. (d) The Council or the Body of Delegates fail to make a recommendation within a reasonable time.

Fourth. As an illustration, the following case is suggested: State "A" intends to attack State "B". "A" declines arbitration and submits its case to the Council, with the demand that it shall be referred to the Body of Delegates. It might not be difficult

for "A" so to influence the representatives of one or more States in the Body of Delegates that no recommendation would be made. "A" therefore attacks "B", overpowers it, and annexes a portion of its territory.

Fifth. Exception has already been taken to the provisions of Article x, which possibly might be invoked in aid under such circumstances. It is not clear at what stage, under what conditions, or with what result the provision of Article x could be thus invoked.

Sixth. It is suggested that the Articles in question should embody a provision that no treaty embodying terms of peace between such contending powers shall be registered under Article XXIII except by express permission of the Council. This would give the Council definite control of the terms of peace, as no treaty is binding until registered. The power of the Council to revise any such treaty would be of great value in deterring any nation from undertaking aggressive war for the purpose of acquiring additional territory.

Seventh. In connection with these five Articles it is to be observed that the Covenant itself apparently prevents any of the Signatories from going to the assistance of a weak Power aggressively attacked by a stronger Power under the circumstances above set forth.

Eighth. In case any High Contracting Party breaks or disregards its Covenant, how is the fact to be evidenced so as to affect the High Contracting Parties? There is no express provision requiring a determination and a public declaration by the Council. If such a declaration is contemplated it would involve delay; and in that case there should be a provision permitting immediate action in the meantime as a state of war is created by breach of the Covenant.

Ninth. Amend Article XVII as follows: (a) Substitute for the words "the above provisions" the words "the provisions of Articles XII to XVI, both inclusive." (b) Substitute for the word "League" in the last line of the first paragraph the word "Council."

Reasons for amendment: Obvious.

Tenth. Strike out the word "Executive" before the word "Council" in all these Articles.

ARTICLE XIV

Proposed amendment: The Council shall establish a permanent international court of justice, which shall be competent to regulate its own procedure and to hear and determine any

matter or dispute referred to it under the foregoing Article or otherwise.

Reasons for amendment: (a) More direct statement; (b) Necessary provision for regulating procedure; (c) Omission of unnecessary words.

ARTICLE XVIII.

Observations: The methods by which the proposed supervision is to be carried out are not apparent. Compare Articles IX and XIX.

ARTICLE XIX.

No observations.

ARTICLE XX.

Observations: As a pious aspiration this Article is commendable, but it is obviously ineffective except in so far as powers may be conferred and duties imposed upon the proposed Bureau of Labour. The expression "endeavour to secure and maintain" seems inappropriate on the part of any High Contracting Party in respect of its own conditions of labour.

ARTICLE XXI.

Observations: The provisions of this Article are so indefinite that it may mean too much or too little. Its intention should be clearly defined. The last two lines seem to have no special relation or relevancy to the remaining portion. It is suggested that this Article might be omitted as its purpose will be expressed more fully in the Freedom of Transit and Equality of Trade Conditions Conventions.

ARTICLE XXII.

No observations.

ARTICLE XXIII.

Observations: It is presumed that this Article is intended to include a treaty between a Signatory and a non-Signatory State. In such case, is it intended that the non-Signatory State shall be entitled to the benefit of this Article? If, so, its terms require further consideration.

ARTICLE XXIV.

No observations.

ARTICLE XXV.

Proposed amendment: The High Contracting Parties severally agree that all obligations entered into between themselves

which are inconsistent with the terms of this Covenant are hereby abrogated, and they undertake that they will take immediate steps to procure their release from every such obligation entered into with any State not a party to this Covenant, and that they will not hereafter enter into any such obligation; nor shall any State bound by such an obligation be hereafter admitted to the League until it shall have procured its release therefrom.

Reasons for amendment: This article as originally drafted deals with four distinct cases, three affecting the High Contracting Parties and one the States not yet admitted to the League. As the Article stands these are confused and on its face the second paragraph is inconsistent with the first.

ARTICLE XXVI

Proposed amendment: Strike out in both instances the words "whose representatives compose" and substitute the words "represented in." Strike out also the word "Executive."
Reasons for amendments: Obvious.

GENERAL OBSERVATIONS

In view of criticisms put forward in certain quarters, it is suggested that the Covenant shall contain suitable provisions for the peaceful withdrawal of any State which may so desire.

In addition to the provisions enabling the Council and the Body of Delegates to determine procedure at their meetings, it is suggested that each of those bodies should be empowered to establish general regulations as to procedure in respect of other matters with which they may be called upon to deal; for example, the form and length of notices to States upon reference of disputes, the arrangements for publicity, the formulation and notification of their recommendations or decisions, etc., etc.

It is assumed that the adhesion of each Signatory State to the Covenant will be subject to the approval of its Parliament.

It is also assumed that the Dominions of the British Empire are entitled to become Signatories to the Covenant.

The comments of Sir Robert Borden have already been mentioned as being before the Commission on the League of Nations on March 26. In a letter of March 21 written to Mr. Oscar Straus, Borden stated that his Memorandum had been circulated among the members of the British Empire Delegation on March 13 and that a copy had been sent to President Wilson on March 14. In another letter to Straus, dated March 27, Borden wrote as follows:

I am glad to know that a considerable portion of my suggestions commend themselves to your good judgment. My observations with respect to Article x were not intended to affect the recognition of the Monroe Doctrine as an International Convention. Hitherto it has been simply an article of foreign policy on the part of the United States Government; but even with that limitation it has been of great service in maintaining the peace of the world. Probably if it received recognition as suggested, the responsibilities which it entails would be more definitely understood, not only in the United States but among all the nations.

The following "Notes on the Draft Covenant" by Mr. W. M. Hughes, dated March 21, were written from a rather hostile point of view, and most of his detailed criticisms were unimportant; however, the fundamental observation of Hughes that the basic principle of a League of Nations should be the idea of a standing international conference is sound:

The following notes do not profess to be an exhaustive criticism of the provisions of the Draft Covenant but merely call attention to some of the more obvious points that need reconsideration.

In a document of such vital importance, every line needs thorough examination, and I understand that opportunity is to be afforded for its detailed consideration by the Peace Conference.

No attempt is here made to discuss how far the Covenant will be effective to promote peace and prevent war; nor to enter into a detailed criticism of its text; but taking the draft as it stands, certain general observations are offered on its outstanding features.

There are two rival principles that have been set up as the foundation of a League of Nations. One is based on the idea of an international Government or Super-State; the other on the idea of a standing international Conference, or an organ of consultation.

The draft, in its main outlines, is based on the consultative idea; but it is full of expressions and phrases which suggest the governmental idea and which not only tend to obscure the proper functions of the League, but introduce a dangerous ambiguity; dangerous to the acceptance of the principle in the first place, and to its successful working if adopted.

The Executive Council: The first of these suggestions is a matter of nomenclature, and is of fundamental importance. The

"Executive Council" is a misnomer. Its functions are not executive, but (except as to Mandates, which will be referred to later), *advisory*.

"Executive Council" is a phrase taken from government, and suggests at once a governmental body. The draft provides for three kinds of organs—an "Executive Council," a "Body of Delegates," and a "Permanent Court of International Justice" and the inference from the nomenclature is strong that an analogy is suggested with the Executive, Legislative, and Judicial Departments of a National State.

This is a false analogy, and the nomenclature should be altered to avoid it.

The *origin* of the two bodies, the "Council" and the Body of Delegates, is due to the desire to have (1) a body which will be representative of *all* the contracting parties and (2) a body small enough for the prompt transaction of business. The natural solution of this problem is to have a general body meeting occasionally for full dress debate, and an inner Committee or Council in more frequent session. But it cannot be too strongly emphasized that the large body is not a Legislature, and the small body is not an Executive, and a nomenclature which encourages that idea is dangerous. Both are organs of international consultations.

The draftsmen seem to have had some difficulty in defining the functions and the relations *inter se* of these two bodies. The provisions for co-ordinating them are slight and fragmentary. The "Great Five" are represented on both. The "Body of Delegates" is the electorate which chooses the "four other States" to be represented on the Council. The "Secretary General" of the League is Secretary to both. But when they come to functions, the relations between them are very much at large. They both "deal with" matters within the sphere of action of the League; they co-operate in the satisfaction of amendments of the Covenant; and the Council *may* in certain circumstances, and *must* in others, refer disputes brought before it for the consideration of the Body of Delegates. But there is no provision that the Body of Delegates lays down rules for the Council to carry out; or that the decision of either body overrides that of the other. Regarding both as consultative bodies, this is as it should be; but it is important that this should be made clear.

It is suggested that the word "Executive" should be omitted from the designation of the Council.

Functions of the Council and Body of Delegates: There is the same ambiguity in Arts. 2 and 3 where the general functions of the Council and Body of Delegates are mentioned. The Body of Delegates meets "for the purpose of *dealing with* matters within the sphere of action of the League." At meetings of the Council,

"any matter within the sphere of action of the League or affecting the peace of the world may be dealt with."

It does not appear whether the variation of phraseology in these two provisions is intentional or not. But the phrases "sphere of action" and "deal with" again seem to suggest some governmental power.

It is submitted that reference to the purpose of meeting is out of place in these Articles; and that separate provision should be made, in another Article, *defining* the functions of the Council and Body of Delegates respectively, e. g. to consider and report upon matters affecting international relations or the peace of the world.

Effect of Decisions: The decisions of a meeting with regard to any matter will be in the nature of *recommendations*. The provision of Art. 3, that no decision taken at any meeting will be "binding" on a Power unless invited, seems to imply a right of the Council or Body of Delegates to pass "binding" resolutions, in the nature of laws or decrees. This, it is submitted, is inconsistent with the general scheme of the League. If it were contemplated to give any legislative power to the organs of the League, clearly the whole instrument should be redrafted so as to define clearly the extent and the limitations of the Legislative power intended to be conferred.

Admission of New States: Art. 7 requires, for the admission of New States, invited to adhere to the Covenant, the assent of "not less than two-thirds of the States represented in the Body of Delegates." It is not stated who is to issue the invitation nor how the required assent is to be given. The words are open to the construction that the right of admission is conferred by an affirmative vote of the requisite majority in the House of Representatives.

It is submitted that—apart from other objections—this construction would be inconsistent with the functions of the Body of Delegates as contemplated by the general scheme.

It is not stated who has to be satisfied of the effectiveness of the guarantees mentioned in the last paragraph of the Article. But questions of compliance by a member with the provisions of the Covenant are for consideration by the Council, not by the Body of Delegates. The article appears to need reconsideration.

Reduction of Armaments: The drafting of Art. 8 is unsatisfactory. It begins by affirming the principle that reduction of armaments is necessary to the maintenance of peace, and that the Council is to "formulate plans" for that purpose. So far, the consultative nature of the Council is kept in view.

But it goes on to provide that the Council "shall also *determine*, for the consideration and action of the several Governments" what

military equipment and armament is fair and reasonable. This wording is inconsistent with itself. Determination means decision; and determination for the consideration and action of others is a contradiction in terms.

"Recommend" would seem to be a more suitable word than "determine."

The article proceeds: "These limits, when adopted, shall not be exceeded without the permission of the Council." Adopted by whom? By the Council or by the Governments? If by the Council, there is an inconsistency with the "consultative" nature of the League, and the Council is empowered to dictate to each H. C. P. what its scale of armaments shall be; a position which can hardly be contemplated. If by the Governments, the provision appears unnecessary and might be omitted; an agreement entered into by a Government would of course be binding upon it.

Interchange of information: The natural meaning of these words is that each Power should exchange information with every other power. It would be simpler and more satisfactory for each Power to give the information to the League.

Threat of War: The phraseology of Art. 11 is ambiguous. It is not clear whether "the right to take any action that may be deemed wise and effectual to safeguard the peace of nations" is reserved to the H. C. P. individually or collectively. If individually, concerted action would be altogether optional, and each State could act separately at its own discretion. If collectively the paragraph is meaningless; for obviously the one thing which the H. C. P. cannot collectively surrender is the right to take such action. Such a surrender may be made by each to all; but cannot be made by all.

The second paragraph, affirming the "friendly right" of each of the H. C. P. to draw the attention of the League to circumstances threatening to disturb peace, is a very weak conclusion. Such matters have already been declared to be a concern of the League, and the right to bring such vital questions before the League is necessarily implied in membership of the League.

It is suggested that the Article be reconsidered.

Inquiry Before War: There is an inconsistency between Art. 12 and Art. 15. In Art. 12, the H. C. P. agree in no case to make war against a member of the League which complies with a recommendation of the Council; in Art. 16, this undertaking is limited to the case where the recommendation is unanimous. As this goes to the very root of the matter, it is clear that amendment is necessary.

Breach of Covenant: Art. 16 embodies the "sanction" of the Covenant in Art. 12 by providing that a State breaking the covenant shall "thereby *ipso facto* be deemed to have com-

mitted an act of war against all the other members of the League"—which undertake to sever relations and intercourse with the offending State, and to prevent its intercourse with other States.

In spite of the strong arguments for a definite sanction of this character, it is submitted that a pledge of this sort, to enter into a state of war automatically in a certain event, is a mistake. The weight of the League behind the bare covenant is itself a sanction which would be as effective as a pledge. The League ought to be left to take counsel when the case arises, without a cast-iron pledge.

It is suggested that the Article be recast, with a view to limiting it to an affirmation of the *right* to make war against a covenant-breaking State.

Outside States: The last paragraph of Art. 17 empowers the Council, where a non-member has refused the invitation of the League to accept the obligations of membership *ad hoc* for the settlement of a dispute, to *take such* action and make such recommendations as will result in a settlement. The functions of the Council should be limited to making recommendations; there is no other action which it can take.

Mandates: The one definite power of executive *action* given to the Council is the power to define by Act or Charter, the degree of authority, control, or administration to be exercised by a mandatory State—if not previously agreed upon by the H. C. P.

This is something of an excrescence upon what is otherwise purely a consultative body; and it is to be hoped that its practical application will be done away with by the necessary mandates being all agreed to by the H. C. P. The functions of the Council will then be to receive and examine the reports of the Mandatories, to watch, by means of the Mandatory Commission, over the execution of the mandates, and to make reports and recommendations. If the mandates are all so agreed on beforehand, par. 8 of Art. 19 can with advantage be omitted.

General Arrangement: It is submitted that it would help to a clear understanding of the scope and functions of the League if its provisions were rearranged so as to set out in separate groups:

(a) The principles agreed to by the H. C. P.
(b) The covenants entered into in relation to those principles.
(c) The organs for international co-operation and consultation established by the League.
(d) The functions of those organs.

In the present draft, the principles, the covenants, and the functions of the Council and Body of Delegates are scattered

through the instrument, with the result that it has a somewhat formless appearance and the relations of its different provisions are somewhat obscured.

The draft as it now stands, halting between the two inconsistent principles of international co-operation and supra-national government, now leaning in one direction and now in the other, is open to widely different interpretations, and stands in serious danger of combining the disadvantages of both with the advantages of neither.

There were also received various American criticisms of the Covenant of February 14 which require mention; the constructive suggestions which they contained were to a large extent favorably considered; furthermore they show to some degree how far American sentiment then reached Paris.

The most notable of these papers, combining learning, political wisdom and common sense, was this letter from Mr. John W. Davis to Mr. White:

EMBASSY OF THE UNITED STATES
OF AMERICA

LONDON, March 24, 1919.

MY DEAR MR. WHITE:

Your letter of the eighteenth was duly delivered to me by courier and I take the first uninterrupted opportunity I have had since its receipt to make reply. Your request for my criticisms on the draft Covenant of the League of Nations finds me empty handed for I have never undertaken to put down in words the changes I would make if a free hand were given me. The only copy of the Draft which I have seen was that which appeared in the papers under date of February the 14th and while I read it with some effort at critical appreciation I did not attempt to put my thoughts in regard to it in order partly because of preoccupation, partly because of a want of information as to the reasons which prompted the use of this or that language, and partly because I knew that it would inevitably undergo further revision at the hands of its framers. It seems, therefore, rather a fruitless task to engage in criticism of a document which may have already changed its form. There is always a danger, moreover, that long range criticism based on insufficient information may simply create doubts instead of removing them.

From the standpoint of information I am no better off in attempting to meet the attacks which are being made on the project in the United States. The only speech of which I have seen any-

thing approaching a complete text is that made by Senator Lodge in the Senate on the 28th of February. I gather that out-and-outers like Borah, Reed or Thomas are professedly against the whole idea and will be satisfied with nothing less than a policy of absolute isolation. I confess that, notwithstanding his protestations to the contrary, Senator Lodge's speech makes on me a not dissimilar impression and leaves me wondering whether he would not have been equally ready to attack the project if it had been submitted in any other form. Let me summarize his objections as I gather them from the speech in question with my comment in relation to the same:

(1) It is an abandonment of the policy of detachment from European affairs enjoined by the Farewell Address.

I do not concede that Washington deprecated an arrangement of this character when he fulminated against "entangling alliances." But whether he did or not, an effective League of Nations and a policy of individual isolation are clearly incompatible. Those who favor one must surrender the other, and the American people are face to face with this choice. No amendment of the draft can meet this objection. I think they stand for the League.

(2) It abandons if it does not destroy the Monroe Doctrine.

Senator Lodge states this doctrine to be, "That the Americas should be separated from the interference of Europe, and that American questions in all parts of this hemisphere should be settled by Americans alone." I think he would have trouble, in history if not in logic, in sustaining this as an accurate statement of the Monroe Doctrine. However that may be, he suggests that this objection can be met in "three lines" whose contents he does not state.

For my part the guarantee of political independence and territorial integrity contained in Art. 10 of the draft seems to protect all that the Monroe Doctrine was designed to cover, and to support it by a universal pledge instead of the mere American *ipse dixit*. Might not any effort to improve upon this be a case where "striving to better, oft we mar what's well?"

Would we add anything by saying for example

> Art. .... The high contracting parties agree that no part of the American continents is to be considered as subject to future colonization or acquisition by any European (or Asiatic or African) power,
>
> and/or
>
> in any case in which it may be desirable hereafter to issue any mandates in regard to the same or to authorize the use of any force therein to protect the covenants of the League, such mandate or mandates shall be addressed solely to states in

being upon such continents, and such force shall be contributed by them alone.

This would certainly meet the demands of the most rigid and exacting Monroeite, but how would it be taken by the other powers, and how many American states would it take to keep the U. S. A. in the straight and narrow path?

(3) There is no provision made for peaceful withdrawal from the League.

This seems to me a point where there is room for an honest divergence of views, without great difference in the final result. I think it may be safely predicted that this League is either the dawn of a new and permanent international order, from which states will no more have the right to withdraw than the individual to declare himself out of organized society, or it is a mere transient phenomenon which will go to an early grave with none to do it reverence. No middle ground seems to me to be possible.

In the former event states should not be permitted to withdraw; in the latter, no one need worry for the League will collapse of itself.

Personally I dislike to see written on the face of the document the sign of its own mortality; but I would yield the point rather than have it strangled at birth.

Of course a peaceable withdrawal should be conditioned upon adequate notice—one year or more—to prevent so far as any form of words can do it, surprise attacks upon other members of the League.

(4) The arbitration clauses are too sweeping.

The Senator insists that they should be amended to exclude immigration and, "certain other questions vital to our national existence," which again he does not specify. This is the old dispute which has been up in reference to our arbitration treaties for twenty or more years. I may be mistaken but I think the existing treaties but lately ratified go quite as far as the present Draft, perhaps even further.

As I read Arts. 13 and 14 the parties agree to submit to arbitration only those disputes which "they recognize to be suitable for submission to arbitration," and all others go for enquiry to the Executive Council or Body of Delegates under Arts. 12 and 15; and the covenant is that in no case shall war be resorted to until either (1) arbitration or (2) enquiry has been had. Certainly there is ample protection in this against the danger present in the Senator's mind.

It is true that in Art. 15 the Executive Council is given power after enquiry to "propose the measures necessary to give effect

to the recommendations" but I do not understand that this is intended to put the report of the Council upon an equivalent status with an award of the Court of Arbitration, or to justify without more saying the use of force to execute the Council's findings.

(5) The draft does not state "whether the League is to have an international force of its own or is to have the power to summon the armed forces of the different members of the League."

Clearly there is nothing in the draft which looks to the creation of an international force, nor is the Council given power to do more than recommend. Why state a negative? Is it necessary to add some such clause as that of our Constitution, that

> "All powers not herein expressly granted to the various agencies of the League are reserved to the high contracting parties, individually and severally."

Does not all this go without saying?

(6) The language is "crude," "loose," "lacks precision" and "demands interpretation."

General criticism of this sort is not very helpful. Without stopping to weigh adjectives it may be agreed that there is room for improvement. It could hardly be otherwise in any document which is the hurried product of so many various minds. I understand, however, that revision is now actually in progress, which disposes one all the less to spend time in mulling over the initial draft in order to meet general objections of this character. I take comfort, too, in the reflection that a certain famous charter which has been much praised as a model of constitutional style, and which in the Convention passed through the Committee of the Whole, the Committee of Revision, and the Committee on Style under Gouverneur Morris, has given the Courts of the U. S. A. work for one hundred and thirty years in an effort to fathom all its meaning—and the job is not finished yet.

(7) That the proposition is altogether altruistic.

This is not the Senator's exact language but he insists that "if the United States enters any League of Nations it does so for the benefit of the world at large and not for its own benefit"; "whatever we do there—Europe—we do from almost purely altruistic motives"; "to make any real advances toward the future preservation of the world's peace will take time, care and long consideration. We cannot reach our objects by something hastily constructed in a few weeks in Paris, in the midst of the excitements of a war not ended."

It is these sentences and others like them which lead me to

suspect that the Senator, whether he realizes it or not, is *au fond* against any effort at a new international order, and that his mind is bent not upon amendments which would render the present scheme acceptable but upon objections which would render it or any substitute impossible. I say this not in criticism of his attitude but because I think it must be borne in mind in any effort made to meet him. If the iron is not hot now, when will it ever be?

I am quite aware that what you have asked for is not my opinion of the speech made by Senator Lodge, or anyone else, but my own criticisms of the League Draft itself. I have kept this in mind and have used the Senator simply as a peg on which to hang my own opinions. For the reasons at which I have hinted, I hesitate to go further and make affirmative suggestions. Certainly I should not wish to do so at the request, or for the use of, any person other than yourself, the President, and your fellow Commissioners; nor, on the other hand, have I any desire to withhold any contribution, however slight, which I am able to make to the success of your labours. I offer, therefore, the following queries based on the Draft of February 14th which lies before me and which you are at liberty to submit to any of your fellow Commissioners:

(A) By Art. 2 the Body of Delegates is authorized to deal with "matters within the sphere of action of the League"; by Art. 3, the Executive Council with "any matter within the sphere of action of the League or affecting the peace of the world."

Why this difference in language? What are the matters affecting the peace of the world which are not within the sphere of action of the League? Why not use the same language as to each; indeed why use the phrase at all, for it seems to add nothing to the sense.

(B) How many representatives is each power to have on the Executive Council under Art. 3?

(C) Under Art. 7 no state is to be admitted hereafter to the League "unless it is able to give effective guarantees of its sincere intention to observe its international obligations." What guarantees are referred to; not naval or military for they are provided for in the succeeding phrase.

Would the meaning be better expressed by the words "unless in the opinion of the Body of Delegates it may be expected to observe its international obligations"?

(D) Certain subjects are committed to the League *eo nomine*, as for instance, by Art. 7, the prescribing of principles in regard to naval and military forces and armaments for incoming states; by Art. 9, the receipt of advice from the per-

manent commission on military and naval questions; by Art. 18, the supervision of the traffic in munitions; by Art. 19 the supervision of mandates upon report from the Mandatory Commission; by Art. 21, freedom of transit and equitable treatment of commerce between member states; by Art. 22, the control of existing and future international bureaux.

No agency is designated within whose jurisdiction these matters fall. Are they to be dealt with by the Delegates, the Council, or the member states as individuals? Have the Delegates or the Council or both together the power to allocate these duties and perform them?

(E) Art. 14 gives the Council power to formulate plans for the establishment of a permanent Court of International Justice, which "when established" shall have power, etc.

Does the Court come automatically into being when the Council has formulated the plan, or is the plan to be adopted (a) by the Delegates or (b) by the member states as individuals before it is operative.

Should it not read—"The Executive Council shall formulate and report to the high contracting parties for their several approval and adoption, plans for the establishment, etc."? In such cases should not the approval of two-thirds or three-fourths be conclusive?

(F) Similar questions arise as to the reports which the Executive Council is to make as to plans for the reduction of armament (Art. 8, first sentence), private manufacture of munitions (Id. third Sentence), the means for fulfilling the obligation of Art. 10, and perhaps others.

In my judgment it will save inevitable dispute, and contribute to the effectiveness and stability of the League to indicate in every such paragraph where the power of final action is lodged. It can be done with a minimum of words.

(G) Lodge criticizes Art. 19 on Mandates for its argumentative and rhetorical, rather than legislative, style. The point seems to be well taken and although there was probably a reason for presenting it in this shape no doubt it can be—and will be—recast to advantage.

As you will observe most of these questions relate to matters of structure and style rather than to principle. Many of them may be grist already ground before this letter comes to your or another's hands. It is always a temptation to meddle with other men's words, although it is a thankless task at best especially when one does so unbidden. I have no doubt that if Moses had submitted the Tablets which he brought from Sinai to the assembled priesthood we should never have had them in their present

form. I know they could not have gone unscathed through any legislative committee with which I have ever been connected, and I have been honored by membership on no small number of such bodies; but I cannot believe that when the Covenant comes before the Senate its ratification or rejection will turn upon questions of style.

I wish I might be of more substantial aid to you and your colleagues in your heavy responsibilities. As it is, I have simply added another to the mass of documents that weigh you down. My excuse must be that I could not refuse your direct request without discourtesy and that I am, with sentiments of great esteem and regard,

Your very humble and obedient servant,

JOHN W. DAVIS

HON. HENRY WHITE,
The American Commission to Negotiate Peace,
Hotel Crillon, Paris.

The views of William Jennings Bryan were reported in a newspaper article written by him under date of March 12. While favorable to the League, he proposed some changes and additions. Among these was an utterly impossible suggestion that the League should deal with claims for what were called "the waste places of the earth." The idea is another illustration of the mysterious identity of the vague phrases of alleged liberal thought with the most far-reaching imperialism of the extreme Right. A political Einstein could doubtless demonstrate that the supposedly straight line which runs from the Right to the Left is really a circle. The comments of Mr. Bryan follow:

The League of Nations is the greatest step toward peace in a thousand years. The idea of substituting reason for force in the settlement of international disputes is in itself an epoch-making advance. The constitution of the League as announced provides for three things which constitute in themselves an advantage, the importance of which can scarcely be estimated.

Deliberation before war—the investigation of all disputes of their kind and character before hostilities begin. This almost ends war. The idea is taken from the 30 treaties negotiated by the United States with three-quarters of the world. Our nation, therefore, gives to the Peace League its greatest piece of machinery.

Second, the reduction of armaments will make it impossible

for a nation to prepare for war without notifying the world of its intention.

Third, the abolition of secret treaties which will do much to prevent the combinations which lead to war. If the League of Nations did nothing more than provide these three things our nation would be justified in supporting it to the utmost.

It is not to be expected that so great an idea as the League of Nations would be made perfect in detail in so short a time. There are defects that should be corrected, and the fullest discussion of proposed amendments should be invited. The newspapers of Great Britain, France and Italy are not backward in the expression of their views as to changes that should be made. Why should the American people be silent?

Ours is the nation most influential in the League, and most powerful because most disinterested. Its people should help by free and frank discussion to perfect the League. The President has done the best he could, but he will be aided by intelligent criticisms from those friendly to the idea.

I venture to point out certain amendments that should, in my judgment, be made in the interest of a stronger and better League. First, the basis of representation is not fair to the United States. A comparison of voting strength will show that while our nation is the most powerful in the combination, whether measured by population, wealth or moral influence, it has no larger vote than nations much inferior in population, wealth and influence. This inequality ought, if possible, to be corrected, for justice is the only foundation upon which any institution can rest in permanent security.

Second, the terms of admission to nations that may desire to join hereafter are not fair. To require a two-thirds vote to admit a new nation suggests the social club, where a few blackballs may keep out an uncongenial applicant. This World League is for the world. The President has well said that our nation is not interested in a league unless all nations are in it.

The qualification for admission ought to be fixed, and then it ought to be made as easy as possible for those who are qualified to gain admission. Under no circumstances should the consent of more than a majority be required for the admission of any qualified nation.

The faults of the constitution are found to be in its indefiniteness rather than in things positively objectionable. For instance, it is not stated with sufficient clearness that the Monroe Doctrine is preserved.

Our nation is not asking to be permitted to assist in the settlement of European disputes, and therefore it ought not to be asked to give up its paramount influence in the western hemisphere as

a condition precident to its entry into the League. Then, too, it is not stated with sufficient clearness that a League member is not required to become a mandatory.

It ought to be definitely stated that a nation asked to become a mandatory is at liberty to accept or decline. Again, it should be made clear that the League is not to interfere in the internal affairs of the nations belonging to the League. The League is for the settlement of international disputes, not for the adjustment of differences between a nation and its own people.

Another matter that should be made clear—and nothing can be more important than this—is that each nation has a right to decide for itself whether it will undertake the things advised by the General Council. The language of the constitution, while not definite, would seem to indicate that no nation is required to furnish force to back up a decision of the Council. But no doubt should be left on this subject. This nation cannot afford to allow a council in which it has so small a voice to carry it into war against its will.

Our people will have as much sense when the time comes to act as they have now and they will have more light to guide them. When the emergency arises and they understand all the circumstances and conditions, they may be willing to assist by force, but they can not decide in advance or allow a council to decide for them.

The constitution of the League would seem to imply the right of the Council to compel the declaration of an economic boycott by the members of the League. This is not quite so serious as the declaration of war, but economic boycott is likely to develop into a war and an economic boycott may be pecuniarily advantageous to the nations that want to declare it. Our interests may not be identical in this respect, and we ought to have a right to say at the time whether we would declare such a boycott.

I venture to suggest that the scope of the Leagues' work might well be extended beyond what is now contemplated. A substitute for war must be able to deal with every situation that can become a cause of war.

One of the most fruitful causes of war has been the necessity for expansion. Growing nations, feeling the necessity for more room, have often gone to war on some clumsy pretext when the real purpose has been to secure territory for an increasing population. The right to live is one of the inalienable rights. It is a primal right that must be recognized in nations as well as individuals.

Nations exercise the right of taking unused land and distributing it among those who need it. So, if the League of Nations is to substitute reason for war, it must be able to deal with claims that are made for the waste places of the earth. A nation feeling

the need for more territory should be able to go before the League and present its claims, and point out territory which it can use to advantage.

The Council should consider the claim and advise upon it, and the force of public opinion should be used to secure such an adjustment of equities as would afford a peaceful means of securing needed territory.

Such adjustments could be made the easier if the League indorsed the proposition that any nation extending its sovereignty over new territory should stand ready to purchase the property of residents who do not desire to remain under the new sovereignty.

The resident does not go with the land. He has rights independent and superior to the right to the land. If against his will he is brought under new sovereignty he ought to be able to sell his property without loss and choose a sovereignty of his own like.

I have suggested what seemed to me to be desirable changes, some being modifications, some being merely more explicit statements. I conclude as I began, that while we should endeavor to make the League as nearly perfect as possible, we should not allow its imperfections to lead to its rejection.

We must take risks no matter whether we accept the League or reject it. The risks that we take in accepting it are less than the risk we take if we reject it and turn back to the old ways of blood and slaughter. God grant that those who are intrusted with the launching of this great work may have the wisdom to so purge it of selfishness and greed, and so infuse into it the spirit of the Prince of Peace as to make it the end of war.

However, in sending these comments of Mr. Bryan to Colonel House, Secretary of the Navy Daniels, who was in Paris, wrote as follows under date of March 27:

When we were talking about Mr. Bryan and his attitude toward the League of Nations to secure peace, I told you I would send you a copy of Mr. Bryan's statement in which he suggests certain amendments. I do not know whether I told you Mr. Bryan said while he believed these amendments were very important, so great was his faith in the absolute necessity of the League that we had better take no chances in accepting the document even if the covenant was not perfect and that it would be disastrous to lose this golden opportunity. I am giving the President a copy of this statement.

The amendments of Mr. Root [1] were received by this cable from the Department of State on March 28:

[1] Mr. Root's letter to Mr. Will H. Hays which enclosed his six amendments to the Covenant is dated March 29, 1919, and may be found in *A.J.I.L.*, vol. xiii, p. 580.

Following are proposed amendments to the constitution of the League of Nations which have been drafted by Mr. Root:

First amendment. Strike out article thirteen and insert the following: The high contracting powers agree to refer to the existing permanent court of arbitration at The Hague or to the court of arbitral justice proposed at the Second Hague [?], when established, or to some other arbitral tribunal, all disputes between them (including those affecting honor and vital interests) which are of a justiciable character and which the powers concerned have failed to settle by diplomatic methods. The powers so referring to arbitration agree to accept and give effect to the award of the tribunal.

Disputes of justiciable character are defined as disputes as to interpretation of a treaty, as to any question of international law, as to the existence of any fact, which, if established, would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach.

Any question which may arise as to whether a dispute is of a justiciable character is to be referred for decision to the court of arbitral justice when constituted, or, until it is constituted, to the existing permanent court of arbitration at The Hague.

Second amendment. Add to article fourteen the following: The Executive Council shall call a general conference of the powers to meet not less than two years or more than five years after the signing of this convention for the purpose of reviewing the condition of international law and of agreeing upon and stating in authoritative form the principles and rules thereof.

On April 17, 1919, at a meeting of the Executive Council of the American Society of International Law, Mr. Root said (see *Proceedings*, 1918–20, pp. 50, 51).

> I wrote a letter some time ago on the general subject to Mr. Hays, and proposed half a dozen amendments. The State Department asked for those amendments, and they were furnished to it some time before the letter was sent. The Department cabled the amendments over to Mr. Lansing in Paris, and they were before the Commission that was revising the Covenant.

The date on which the amendments of Mr. Root were furnished to the Department of State does not appear. However, the Department cable, which quoted them textually, was dated March 27 and received at Paris March 28.

The rather general view, however, that it was this cable of Mr. Root which first proposed the definition of justiciable and non-justiciable disputes in Article 13 of the Covenant, which Dr. Scott expresses (see *The Project of a Permanent Court of International Justice*. 1920, p. 103) in the statement that Mr. Root "himself prepared the draft which was embodied in Article 13 of that document," would seem by the dates to be erroneous. The language which is now paragraph 2 of Article 13 was in substance laid before the Commission on the League of Nations as a proposed amendment to that Article at the Twelfth Meeting of the Commission on March 24, as the minutes of that meeting show. Indeed its text was included in a list of amendments circulated in typewritten form by the British Delegation at that meeting.

The language itself, as Mr. Root pointed out, originated much earlier. As he said, it was the language of the Bryce group. See note, p. 327.

Thereafter regular conferences for the purpose shall be called and held at stated times.

Third amendment. Immediately before the signature of the American delegates, insert the following reservation: Inasmuch as in becoming a member of the League the United States of America is moved by no interest or wish to intrude upon or interfere with the political policy or internal administration of any foreign state, and by no existing or anticipated dangers in the affairs of the American continents, but accedes to the wish of the European states that it shall join its power to theirs for the preservation of general peace, the representatives of the United States of America sign this convention with the understanding that nothing therein contained shall be construed to imply a relinquishment by the United States of America of its traditional attitude towards purely American questions, or to require the submission of its policy regarding such questions, (including therein the admission of immigrants), to the decision or recommendation of other powers.

Fourth amendment. Add to article ten the following: After the expiration of five years from the signing of this convention any party may terminate its obligations under this article by giving one year's notice in writing to the Secretary General of the League.

Fifth amendment. Add to article nine the following: Such commission shall have full power of inspection and verification personally and by authorized agents as to all armament, equipment, munitions, and industries referred to in article eight.

Sixth amendment. Add to article twenty-four the following: The Executive Council shall call a general conference of members of the League to meet not less than five or more than ten years after the signing of this convention for the revision thereof, and at that time, or at any time thereafter upon one year's notice, any member may withdraw from the League.

I think it worth while to make some comment on certain of these amendments suggested by Mr. Root, in the light of the situation in Paris in 1919 and of the years of subsequent history.

Mr. Root's first amendment is for obligatory arbitration within certain defined lines. Even in 1919 the proposal was outside the realm of practical politics. Neither the United States Senate nor the British Empire was then willing to adopt such a proposal in the Covenant or outside of it. The same situation exists in 1927. In 1919 the smaller Powers of Europe were willing, as they had been for some time previous, to accept obligatory arbitration. None of the Great Powers of the world was then willing to accept it. Since that time the idea of obligatory arbitra-

tion has made considerable progress outside of the United States. Various treaties embodying the principle have been entered into by quite a number of countries and most notable and most important of these agreements are those of Locarno. And while no Great Power has ratified the obligatory arbitration clause of the Statute of the Permanent Court of International Justice, France was willing to do so if the Protocol of Geneva went into force.[1] France in the Locarno agreements, and Germany and Italy in other treaties, have agreed to obligatory arbitration with various Powers. But the British do not yet accept the principle or seem willing to make a general agreement of arbitration with any other country, with the possible exception of the United States; and the United States would not now agree to obligatory arbitration with any country whatever.[2]

Mr. Root's second amendment proposed an International Conference for what is now currently called the "Codification of International Law" and for the periodic meeting of such a Conference thereafter. So far as the text of the Covenant is concerned, such a Conference might be called without any specific provision regarding it.[3] Looking at the idea on its merits, particularly in the light of the discussion of the last few years, it is clear that the work of any such Conference or even of a series of such Conferences could not possibly achieve any generally accepted "codification." Under the League of Nations some success has been reached in various directions toward general agreement on the principles and rules of international law relating to certain subjects. Perhaps a definite statement of *all* the rules and principles of international law is a desirable aim; current uninformed opinion seems unanimous in the affirmative, though most students realize that any such "code," if its creation were possible, would raise more ghosts than it laid; but in any case it is clear that progress toward such accord will of necessity be very slow; certainly in every field there must be considerable preliminary technical studies carried on before Governments agree; I mean such studies as those of the existing Committee of Experts ap-

[1] It appears now that Germany will ratify this Optional Clause.

[2] However, the Havana Conference has (February 18, 1928) adopted a resolution on the subject to which our Delegation assented.

[3] The Eighth Assembly (1927) passed a resolution for "a first Codification Conference," to be held in 1929 and to which these three questions will be submitted:

(a) Nationality.
(b) Territorial Waters.
(c) Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners.

pointed by the Council; and as to some subjects, the research that has already been carried on ought to be sufficient to demonstrate to any impartial mind that general agreement at the present time is hopelessly impossible; some points may perhaps be dealt with now and others may perhaps be dealt with partially; but that is all and it requires a good deal of optimism to go so far.

Mr. Root's third amendment covered, *inter alia,* the Monroe Doctrine, adopting here some of the stilted and obscure language which was used at the time of the Hague Conventions. Why the foreign policy of the United States should be spoken of as a "traditional attitude toward purely American questions" has always been a mystery to me. Our policy is expressed in our action, in our diplomatic correspondence and in our State papers. Objection to a phrase may seem hypercritical; but I submit that our policy is to be based on common sense and not on tradition. Certainly if the Japanese ever thought of acquiring Magdalena Bay, I would look to no tradition as a basis for opposition to such acquisition. There would be some difficulty in supporting the idea that Mr. Monroe and his colleagues had the Japanese Empire in mind in 1823. Furthermore, how can it be said that the Monroe Doctrine and our foreign policy generally relate to purely American questions? We bought the Virgin Islands from Denmark to prevent them getting into the hands of Germany and we would have gone to war for the same purpose. Now to say that the transfer of territory in the Caribbean by one European Power to another is a purely American question [1] would be a contradition in terms. If the French chose to give up some of their Caribbean Islands or French Guiana to the Dutch, would we object? Probably not at all. If the proposal were to transfer them to Japan, we would go to war to prevent it. Would that be a purely American question?

The sixth amendment, regarding withdrawal and a conference for revision of the Covenant, need not be specially discussed, as the withdrawal clause exists (Article 1, paragraph 3) and amendments or revision of the Covenant may be proposed yearly at the Assembly meetings.

The fifth amendment is another illustration of Mr. Root's willingness to go far beyond the lengths to which the Senate

[1] Cf. the view of Metternich in 1824 who thought that the "grave question" to come before the proposed congress or conference to "aid Spain in adjusting the affairs of the revolted Countries of America" would not be an American question but one "entirely European." See *The Monroe Doctrine 1823–1826* by Dexter Perkins (1927), p. 224 *sq.*

would have gone, even in 1919. In very blunt language, the amendment is much more sweeping than even the proposals of the French at Paris for international inspection of armaments, etc. The Treaty of Versailles provides for such inspection as to Germany; and it may be that disarmament agreements as they are entered into will contain some such clause, although in a milder form. The Treaty Limiting Naval Armaments, signed at the Washington Conference on February 6, 1922, provided merely for reports exchanged by the Treaty Powers, international publicity, in other words.[1] But the time when countries generally will agree to any such international inspection as Mr. Root suggested is still distant;[2] certainly neither the British nor ourselves have ever yet dreamed of agreeing to it.[3]

On March 23 Mr. Oscar Straus had cabled for an expression of opinion from Mr. Taft as to the "amendments essential for Senate confirmation." Taft's answer of March 29, which follows, was largely a repetition of his cable of March 18 to Wilson which was quoted above:[4]

> More specific reservation of Monroe Doctrine. Fix a term for duration of League and limit of armament. Require expressly unanimity of action in Executive Council and Body of Delegates. Add to Article xv a provision: That where the Executive Council or Body of Delegates finds the difference to grow out of an exclusively domestic policy it shall recommend no settlement. Reservation of Monroe Doctrine as follows: "Any American State or States may protect the integrity of American territory and the independence of the government whose territory it is, whether a member of the League or not, and may in the interest of American peace object to and prevent the further transfer of American territory or sovereignty to any European or non-American Power." The unanimity of Executive Council, the American representative on it, will secure reasonable distribution of burdens for the United States in enforcement of Article x and Article xvi.

A summary of the speech of Mr. Hughes before the Union League Club of New York on March 26 was received by radio as follows:

[1] Cf. the last paragraph of Article 8 of the Covenant.

[2] The existing differences of opinion on this point are one of the real obstacles in the way of any general disarmament agreement.

[3] The Coolidge administration is very definitely on record against any such idea.

[4] At p. 277.

Charles E. Hughes, in an address before the Union League Club Friday, outlined his objection to the League of Nations as it now stands. In the opinion of Hughes, as friendly a conference as the occasion may require will be ample for years ahead to keep the peace of the world. Assuming, however, that something will be done toward making effective the project for the League of Nations, he declared himself in favor of expressing recognition of the Monroe Doctrine in any covenant to which this Government may subscribe, and for the clear and unhampered control of American immigration and tariff laws.

Mr. Hughes said he wished to be understood as being for the Society of Nations for the promotion of peace, if it is so organized as not to sacrifice our essential national interests. His objection to the body of the Covenant was that its terms are vague and ambiguous and liable to such difference of interpretation as to breed disputes rather than compose them, and he cited former President Taft and President Lowell as supporting his contention that the Covenant needs clarification.

Aside from formal improvements, he urged that the covenant be amended as follows:

First, by explicit provision as to the requirement of unanimity in decision; second, by suitable limitation as to the field of League inquiries and action, so as to leave no doubt that the international concerns of states such as immigration and tariff laws, are not embraced; third, by providing that no foreign power shall hereafter acquire by conquest, purchase, or in any other way any possession on the American Continent or islands adjacent thereto; fourth, by providing that the settlement of purely American questions shall be remitted to the American nations, and the European nations shall not intervene unless invited to do so by the American nations; fifth, by omitting the guarantee of Article 10 (for protection of territory against external aggression); sixth, by providing that no member of the League shall be constituted a mandatory without its consent and no European or associate power shall be constituted a mandatory of any American people; seventh, by providing that any member of the League may withdraw at pleasure on specified notice.

> "Important changes that are desired," he said, "are not prejudicial to sound international order. Rather will they tend to make it practicable and lasting. We can readily arrange for desirable conferences without disadvantageous commitments. The danger now lies not in the menace of force employed to further imperial designs, but in disorder due to the breakup and removal of traditional restraints and the tendency toward revolution within the States.
>
> We should be cautious in making promises which are to

be remedies for unknown contingencies. It has been said, I understand, that the covenant extends the Monroe Doctrine to the world. This is a singularly infelicitous and inaccurate description of the effect of the covenant upon the Doctrine, which is nothing if not a distinctively national policy. The reported statement is based upon the guarantee contained in Article 10 with respect to territorial integrity and political independency. The provision of Article 10 is, in itself, in my judgment, highly objectionable. But in any event such a guaranty cannot be regarded as an adequate substitute for the Monroe Doctrine. It is the essence of the Monroe Doctrine that it declares the right of self-protection. It does not undertake to interfere with or impair the sovereignty of any other state, but does seek to maintain our own security.

It is idle to say that the covenant in its present form adequately safeguards our traditional policy; in order to safeguard interests that are distinctively American, I agree with Mr. Taft that there should be a further provision that the settlement of purely American questions should be remitted primarily to American nations with machinery like that of the present League, and European nations should not intervene unless requested to do so by the American nations. I regard that guaranty of Article 10 for the protection of territorial integrity as a trouble-breeder, not a peacemaker. I believe it unnecessary and unwise; there is little ground for supposing it will prevent war. In the case of the United States the guaranty will not be made good except by action of Congress, and it will be for Congress to decide whether we are bound and what we should undertake."

Speaking of the Constitutional aspects of the covenant, Mr. Hughes said there is nothing in our history to give assurance that Congress would recognize the authority of the treaty to bind itself to declare war in case it did not approve it. In respect also to trade and financial relations, he continued:

> "Congress would be the judge of its obligations, and if action were not taken as advised by the League, foreign nations might regard the United States as guilty of a breach of faith."

The Radio News Service also brought this account of an article in the Topeka (Kansas) Daily Capital, by Senator Arthur Capper:

> I believe Kansas is overwhelmingly for the League of Nations. I am emphatically for it, because I believe it to be a great step toward enduring peace, which is now the aim of the

world and which the world must and will have. People are now demanding that for which they gave freely all that humanity has to give and for which our boys died in France. It is unthinkable they will be content with less.

The principles and idea are right. Our isolation is no longer possible. Real progress in movement to prevent war and stop military rivalry is America's demand. I have no sympathy with the contention that the League agreement will tend to involve us in war instead of keeping us out of war. I believe the war-weary people of both continents will support a military and economic boycott against the first nation which attempts to destroy another or again ruthlessly plunges the world in war. That means there must be an international organization and agreement. It is for us to advance such an agreement among the nations in every possible way that will lessen the chances of another war. I shall do my utmost to bring such an understanding about this conflict with an equally important duty, but only to emphasize that duty, and that is, it must be so clearly stipulated and understood that the American people do not in any respect relinquish their will in the direction of matters or questions essentially or nationally American, nor any of the Constitutional rights of Congress alone to declare war, should our obligations or our duty compel us to engage in war.

I have failed to see that the League of Nations covenant can be so changed and improved that as finally shaped it will have the confidence and will be satisfactory to the great majority of American people. There must be a frank discussion if the proposed peace compact is to become a peace in fact. The country should be fully informed and should be encouraged to express its opinions. It is not vital that the League covenant be formed before the peace treaty is presented. I approve of the amendments proposed by Senator Lodge and Senator Knox.

There can be no League by an ultimatum of the President, however much we may respect and approve his self-confidence and trust his views. There is too much at stake, but it should be understood that the people will show scant mercy to a mere political obstructionist. It is generally known that the covenant as proposed by the President is fundamentally faulty as might be expected of first draft of so important and epochal a document. It is ambiguous in its terms, incomplete in its machinery for peacefully settling differences between nations, and this lack of definite statement shows a need of revision. I think we should insist upon specific phraseology, which shall leave this nation with the Monroe Doctrine intact, with exclusive

command of its own policy, with the right of any nation to withdraw from the League after due notice, in the event of necessity or desirability of such action.

The covenant must have a more definite reservation for preserving the Monroe Doctrine and such stipulations as will guarantee its perpetuation. I favor a strong and explicit stipulation that no foreign power shall acquire any possession on the American Continent. The League Constitution should be made more definite as to when its obligations may terminate or be renewed. It should set a definite period requiring a reasonable notice to withdraw. I shall decidedly oppose any arrangement to permit foreign nations by a majority vote of their representatives in the League to say when this country shall send American boys, and how many, to fight on a European battlefield. I favor making it unmistakably clear that our immigration and tariff problems are to be considered as purely our own internal affairs.

The United States of necessity must have exclusive control of immigration. It must guard against any possible doubt of meaning on these points, especially, and this compels a revision and amendment to the present draft and plan.

Finally, a cable to Mr. Lamont of March 28 gave this summary of newspaper and other current comment:

Have made extended examination of editorial expressions, especially in the publications you mention. All newspaper comment is very confused, largely because of misapprehension of the purposes of the document and misinformation as to European situation. We would sum up the criticism of particular newspapers more in detail as follows:

CHICAGO TRIBUNE:

1st, that the Covenant creates a world state in which America is a junior partner liable to be outvoted. 2nd, we may be given a mandate for Armenia, whereas if we are to undertake any reforming we should start with Mexico. 3rd, that the Monroe Doctrine will be abandoned. 4th, that power of Congress over immigration and army and navy will be impaired. 5th, that the President's insistence on the freedom of the seas has apparently been entirely dropped because the document is in reality a British proposition. 6th, that the President has arbitrarily stated that the Covenant must be accepted without amendment except in one small particular, this particular not being specified. 7th, that the President is in effect depriving the Senate of its constitutional right to advise. 8th, that if

Russia refused to pay her bonds held in France and the League ordered them paid, millions of American boys might be sent to Russia.

NEW YORK TRIBUNE:

1st, that the League is in reality a five-nation League rather than an all-nation League. 2nd, that each nation reserves liberty of action; therefore there is no direct safeguarding of peace. 3rd, that we are now giving up traditional policies and getting nothing for it. 4th, that the Covenant impairs the sovereignty of the United States and causes us to give up the Monroe Doctrine for a bogus league and rope of sand. 5th, that we should have a strong league with our real allies. 6th, that the President is trying to usurp power of the Senate.

NEW YORK SUN:

1st, that the clause dealing with disarmament and several others clauses violate the constitution. 2nd, that we should have peace first and then have time to carefully work out the problems of the league. 3rd, that the President is trying to force an unconsidered plan upon the public by tying it up to a peace treaty. 4th, that the Monroe Doctrine is abandoned.

NEW YORK WORLD:

This expert had made what purports to be a country-wide analysis of the press. It states that this analysis shows a large sentiment in favor of a League with a strong sentiment also for some revisions of this particular covenant.

Forgetting for the moment the newspaper comments and considering specific suggestions as to amendments whether from those in favor or those opposed to the President, the following suggestions are perhaps worthy of careful consideration:

One, that it would have been better to avoid the word constitution in the Preamble. This is because the word constitution to American students of law and history connotes the formation of a new world state.

Two, that the phrase appearing in article two and again in article three "within the sphere of action of the league" naturally invites a close scrutiny of the whole document to see which is within the sphere of action of the league. Eleven is then read with reference to this broad phrase in article two and article three as a result of which it is contended that immigration, tariffs, et cetera, fall within the sphere of action of the league when they threaten to disturb international peace. There are some suggestions that the broad phrase within the sphere of action of the league be dropped out of article two or article three and that it be made clear that the body of delegates and executive council are merely

consulting bodies. It has also been suggested that there be a specific exception of immigration, tariffs, and other domestic questions.

Three, that there should be a saving of the Monroe Doctrine not only in that European troops should not come to this continent until invited but also that there should be a specific covenant that acquisitions of territory of this continent by foreign powers should not be permitted by conquest or even by purchase. The Magdalena Bay resolution is circumstance favorable in this case.

Four, that article ten by requiring us to make specific guarantees of boundaries by involving us on one side or the other of every boundary dispute might prevent our localizing quarrels between some nations between whom long standing boundary disputes have existed. Moreover, it would give an unlimited guarantee of boundaries of the new states when we do not know whether they should be permanent. Some contend that this article should be limited, others that it be dropped entirely. Among the latter is Mr. Justice Hughes.

Five, that article 16 with reference to blockade is not clear especially in that it requires the United States not only to prevent its nationals from dealing with another outlaw state but also requires the United States to "prevent" the nationals of any other state from dealing with an outlaw state. How could this covenant be performed except by blockade and how would it be applied if an interior country like Poland went to war with Russia in violation of the covenants of the League? How is it contemplated that the United States could prevent the Czecho-Slovaks from dealing with Poland?

Six, a further criticism of article 16 is, that taking the article as a whole, it is not clear whether the violation of the covenant not to go to war without submitting to arbitration or inquiry is *ipso facto* an act of war, or *ipso facto* a state of war.

Seven, that article 18 dealing with armament should be swept into article eight.

Eight, that article 21 is too vague.

Nine, that it should be specifically provided in article 19 that no state can be made a mandatory against its will.

Ten, that it should be explicitly provided that decision is to be unanimous except where the contrary is stated.

Eleven, that the whole covenant should be limited to a term of years with the provision for renewal or failing that, that any nation should have the right to peacefully withdraw after 10 or 20 years upon a given notice.

In all the foregoing we are not commenting upon the soundness of suggested amendments but merely reporting them. We should say that on the whole there has been during the past week more

or less of a tendency to submit the covenant to careful scrutiny. The vague declamation against it which marked the first two weeks is disappearing. On the other hand, a very solid sentiment is appearing that it should be amended in many vital particulars.

It may be said of this cable that it gave a very fair summary of the fantastic and absurd statements which certain papers were then printing. So far as concerned its specific suggestions of amendments, they were to a considerable extent met by the Drafting Committee text. I wrote a detailed comment on them for Mr. Lamont on April 5 as follows:

This refers to the numbered points in the cable of March 28, a copy of which is with your note of April 4.

A copy of the text as it leaves the Drafting Committee[1] is enclosed which is for your information and use but not to be released at present as it has not even gone before the Commission.

(1) The word "constitution" is now omitted.
(2) See paragraph 7 of Article XV.
(8) Article XXI is now part of XXII and I call attention to the first paragraph of that Article.
(9) See the words inserted in Article XXI, second paragraph, "and who are willing to accept it."
(10) See the second paragraph of Article V.
(11) See the last paragraph of Article I.

The foregoing relate to changes. The following are comments:

(3) If there is to be any reservation, it should be broader than that suggested.
(4) This is a question of policy but with the last paragraph of Article I it naturally becomes less important. See also Article XIX.
(5) In the case suggested the prevention would naturally be delayed until the final success of the League. Taking the paragraph as a whole, the point seems a highly technical one at best.
(6) The criticism seems to be obscure.
(7) I do not agree. The question of trade in arms and ammunition with Africa, for example, is very different from the question of armament.

[1] See Document 30.

CHAPTER XXIX

THE FINAL DRAFTING COMMITTEE

The English text of the Covenant reported back to the Commission on the League of Nations by the Drafting Committee appointed on March 26 is (with one notable addition) in large part identical with the English text of the Covenant in the Treaty of Versailles.[1] The Monroe Doctrine clause, now Article 21, was later added, the Drafting Committee having nothing on the subject before them; but not many other changes were made in the Drafting Committee text; and all but two, or perhaps three, of these other changes were of form and not of substance; and the French text was to follow the English.

The first step toward the work to be done by the Drafting Committee was the preparation of a revised text of my own as a preliminary to my conferences with Hurst. Devoting almost my whole time to the work for two days and a half I went through both the English and French texts. I called the English of this "my revision" and it may be worth while to say something about the form in which it was prepared. Using sheets of the previously printed English text designed to show the Covenant of March 26 so far as this was textually possible,[2] I indicated my revision on these sheets by ink changes or typewritten riders, just as one usually corrects and changes galley proof to go back to a printer. With three sets of this revision thus prepared, I was ready to show my ideas in a convenient form to Hurst. One thing that I did not do at this time was to attempt any rearrangement of the various Articles. Some changes in this regard were inevitable; but it was more convenient to defer them.[3]

It seems to me unnecessary to reproduce the revision which I made as a preliminary to my meetings with Hurst on March 29 and 30. Our task was to prepare a text as a basis for the work of the Drafting Committee. While our text was submitted to the Drafting Committee both in English (Document 28) and in

[1] For the text reported back by the Drafting Committee see Document 30.
[2] i.e. Document 27.
[3] For a note on the Numbering of the Covenant Articles, see p. 469 *sqq.*

French, our discussion was almost wholly confined to the English text.[1] For this discussion my revision was the basis; and in general, the changes from my revision were of slight importance.

Both Borden and Hughes in their criticisms of the Covenant of February 14 had put forward the view that the term "Executive Council" was a misnomer and should be changed to "Council." At my suggestion Hurst and I accepted this view and struck out the word "Executive" throughout the Draft. Similarly we changed throughout the expression "States Members of the League" to "Members of the League," a simpler and more convenient form.

When the Commission had considered Article 14, on the Permanent Court of International Justice, it had adopted in principle two amendments to the effect that the jurisdiction of the Court should include, as proposed by M. Larnaude, "toute question qui lui serait soumise par le Corps des Délégués ou par le Conseil exécutif," and the somewhat similar proposal of Cecil (agreed to by Wilson on March 18):

> and also any issue referred to it by the Executive Council or Body of Delegates.

As I have indicated previously, I was opposed to the language of these proposals as being entirely too broad. I thought that although they were perhaps not so intended, they embodied the idea of obligatory arbitration.[2] In writing my own revision of the text before meeting with Hurst, I left them out entirely, so that they would come up for discussion. During our conference, Hurst wrote out this new draft of the Article which I accepted:[3]

> The Executive Council shall formulate plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute or difference of an international character which the parties thereto may submit to it and also to advise upon any legal questions referred to it by the Executive Council or by the Body of Delegates.

This draft met my objections so far as any question of obligatory arbitration was concerned. However, if the language had stood as then written, it would perhaps have been construed to

[1] Only the English is printed as Document 28.
[2] See p. 290.
[3] I still have the paper as Mr. Hurst wrote it. The text in Document 28 is identical except for the omission of "Executive" and of "may."

make the Court the legal adviser of the Council and of the Assembly, a duty which its function of rendering advisory opinions does not involve. But that we had advisory opinions in mind is shown by my memorandum on our revision (Document 28) made at the time, which follows:

> This text is the result of my own revision of the text before the Committee, taking into consideration the amendments submitted to the Drafting Committee, and a subsequent discussion of my own revision and of those amendments with Mr. Hurst, at which the text which I had prepared was substantially accepted, although certain questions were specifically reserved and will be pointed out.

GENERAL CHANGES

Throughout the text the word "Council" is used instead of "Executive Council" as being simpler and less ambiguous.

For the sake of simplicity of expression "Members of the League" is used instead of "States Members of the League."

In the previous text there were various expressions for an international controversy. The word mostly used was "dispute" but sometimes "dispute or difficulty," "dispute or difference," "difference," etc. The word "dispute" alone has been adopted in the present text.

ARRANGEMENT

There is only one striking change in the arrangement. The first part of Article VII has become Article I, and the last part of Article VII is added to a new Article XXVI. This results in the former Articles I to VI, inclusive, being now numbered II to VII, inclusive.

ARTICLE XII-A

This is a Japanese amendment which was adopted by the Commission but is not put into the print. The reason for this omission is that the provision is utterly impossible of application. Its language is as follows:

> From the time a dispute is submitted to arbitration or to inquiry by the Executive Council, and until the lapse of the aforesaid term of three months, the parties to the dispute shall refrain from making any military preparations.

The theory of the provision is if, for example, France and Germany had a dispute, until the time mentioned in the Covenant had elapsed, neither party should make any military preparations.

There are two points completely overlooked:

1. If Germany had made complete military preparations and France had made none, the provision would be utterly unfair.
2. If the dispute were between France and Bolivia, France could make no military preparations no matter what Germany did.

Such a provision would prevent our mobilizing troops on the Mexican border if there was a dispute between the United States and Siam pending before the Executive Council or before arbitration, and of course the dispute which was submitted to arbitration might be utterly insignificant.

Attention is called to the following specific changes, reference being to the new numbers of the Articles:

ARTICLE III

This has been recast without change of meaning except a specific provision that voting in the Body of Delegates is to be by States.

ARTICLE IV

This has been rewritten without any change of substance except that the last paragraph is new.

ARTICLE VI

It is provided that the Secretary General should be appointed by the Council, and the provision regarding the first Secretary General is omitted.

ARTICLE VII

A provision is inserted permitting the Council to decide upon a Seat of the League other than that named, in order to insure satisfactory arrangements.

ARTICLE VIII

This Article has been recast without any attempt to change its meaning.

ARTICLE XIV

This Article has been rewritten in order to exclude any idea of compulsory arbitration and at the same time permit the Court of International Justice to give advisory opinions.

ARTICLE XV

This Article has been rewritten. It now directs a report by a majority of the Council in every case of dispute, but

does not change the provision that only a unanimous report in the sense in which that term is used, has any limitation on the action of the parties.

The President's amendment to this Article has been slightly recast, and, I think, somewhat extended in meaning.

ARTICLE XX

The provision regarding the expenses of International Bureaux, etc., has been omitted.

ARTICLE XXV

This Article has been rewritten without change of meaning.

ARTICLE XXVI

The first paragraph of this Article is new and provides for the formal method of the acceptance of the Covenant by invited States.

RECOMMENDATIONS

1. A schedule of original members comprising certain signatories and certain invited States, should be prepared and published with the text of the Covenant.

2. The Japanese amendment, Article XII-A, should be rejected in any form.

3. The proposal for a Financial section, which is printed at the end of the text in a bracket, should be wholly rejected. It practically would create another Body of Delegates and would arouse much feeling against the Covenant as being capitalistic. Furthermore, the sole purpose of this amendment is to help M. Klotz in the Chamber of Deputies.

4. The proposed addition of the Labor people to Article XIX should be rejected.[1] The Labor Convention should stand on its own basis, and the attempt of the Labor people to hitch their convention to the League of Nations should be prevented.

5. Generally speaking, any additions to the Covenant will be wholly objectionable, hurt its chances of success, and should be resisted.

6. In view of the popular agitation, some amendment regarding the Monroe Doctrine should be incorporated.

31 March, 1919.

As the foregoing memorandum says, various amendments submitted to the Drafting Committee had been taken into consideration. Many of these had, in one form or another, been

[1] See p. 396.

incorporated in the revised text; some were regarded as unnecessary or already sufficiently within the language; still others were either excluded or reserved, as the above memorandum and the subsequent discussion show. There were two amendments, however, which are not above alluded to and were not in the revised text but were left for the Drafting Committee to consider and include. One of these was the French proposal regarding Article 11 (now the second sentence of the first paragraph of that Article) requiring an immediate meeting of the Council in case of emergency. The other was the British proposal regarding Article 13 (now the second paragraph of that Article) classifying certain international disputes as being "generally suitable" for arbitration.[1]

The revised text, as Hurst and I agreed on it, left various questions open or "reserved." One of these was the Japanese amendment which had been accepted by the Commission in principle, as Article 12a, and which our text omitted.[2] While the idea of the Japanese proposal, namely, that there should not be mobilization or military preparations of the Parties while a dispute between them was pending before the Council or some tribunal, is on its face a very proper one, I regarded it as impossible in its application and my reasons are stated in some detail in the above quoted memorandum.

During our discussion about the Japanese amendment, Article 12a, Hurst handed me a draft of a suggested substitute for the Japanese proposal reading as follows:

> The States Members of the League agree that from the time when a dispute is submitted to arbitration or to inquiry by the Executive Council and until the lapse of the aforesaid terms of three months they will not, whether parties to the dispute or not, proceed to the mobilization of their forces or make arrangements with a view to such mobilization.

But, as I said above, I was not in favor of the idea in any form and it did not appear in the text.

Another matter left open was the proposal for a financial section of the League of Nations. Cecil had brought this up on March 18 when he talked with House and myself.[3] The Commission had never accepted it and I was opposed to it. Indeed,

[1] These proposals were reported by the Drafting Committee (see Document 30) in the exact language of the Covenant in the Treaty.
[2] See p. 327.
[3] See p. 282 *sq.*

it had been disapproved at the meeting between Wilson and Cecil on March 18.[1] In the text submitted by Hurst and myself (Document 28) it was printed in a parenthesis at the end of the English version.

We also reserved a clause regarding Labor which was to add to paragraph (a) of Article 19 the words:

> and to this end agree *inter alia* to the creation of a permanent international organization for the purpose of regulating Labor conditions.

The Commission had instructed the Drafting Committee to take this matter into consideration.[2] My objections to it were that it was an effort to tie up the Labor Clauses of the Treaty to the Covenant; I thought that they should stand on their own.

One other question which seemed rather technical but which had a good deal of substance to it also, was considered and left open to come before the Drafting Committee, where it was much discussed. Article 15 provided that a dispute between Members of the League might go before the Council. If the Council made a unanimous [3] recommendation about it, the Parties agreed not to go to war if the recommendation was complied with, although such a recommendation was not strictly a binding decision on the merits. If the Council divided so that there could be no such unanimous recommendation, the Parties to the dispute were not obliged to refrain from war. Suppose that in such a case, (a divided Council), one of the Parties to the dispute attacked the other, it seemed that other clauses of the Covenant might prevent a third Member of the League from going to the support of the attacked State; so the question was, should a clause be inserted to cover such a case? The principle of Article 10 had a bearing here undoubtedly, although the language of that Article does not cover the point. However, I inclined to the view that anything further (in Article 15) was unnecessary, for it seemed to me difficult to envisage as concurrent facts the continued existence of the League and such an attack by one Member on another.

Hurst and I finished our conferences on the evening of Sunday, March 30. The American printers went on during that night and the following day with the printing of the English text on

[1] See p. 292.
[2] For the form in which the proposal was before the Committee, see p. 339 *sq.*
[3] Unanimous in a qualified sense, with the votes of the Parties not counted.

which we had agreed (Document 28) and a French version of it which was very largely the work of my office;[1] while I had given some attention to this French version, Hurst and I hardly discussed it at all.

Another paper which Hurst gave me is entitled "Protocol of Acceptance of Membership in the League of Nations." It read as follows:

> The undersigned, duly authorized by their respective Governments, after taking note of the terms of the Covenant for the establishment of the League of Nations which is inserted in the Treaty of Peace of even date, severally declare that their Governments are desirous of establishing the League in accordance with the stipulations of the said Covenant, and sign this Protocol to establish the fact that the States they represent become members of the League in conformity with Article 7.
>
> Done at Paris this .....1919 in a single original which shall remain deposited in the archives of the Government of the French Republic, and of which a copy duly certified shall be sent through the diplomatic channel to each of the signatory Powers and to the Secretary General of the League.
>
> for the United States of America.....
> for Belgium .....
> for the British Empire
> in respect of the United Kingdom and of the remainder of the British Empire not separately represented.....
> in respect of Canada.....
> in respect of Australia.....
> in respect of South Africa.....
> in respect of New Zealand.....
> in respect of India.....
> for France .....

The significance of this draft is its showing that at this time the final form of the Treaty of Versailles, from a technical point of view, was still undetermined. It was true that the Peace Conference had decided that the Covenant should form an integral part of the Treaty of Peace. The theory was that ratification of the Treaty would make any ratifying Power except Germany a Member of the League; but at this stage the matter of procedure was not altogether clear. Not only was Germany, a Signatory to the Treaty, not to become a Member of the League, but it was contem-

[1] I do not print the French.

plated that Neutral Powers, who would of course not be parties to the Treaty of Peace, should nevertheless adhere to the Covenant and become Members of the League. The Covenant, thus, while a part of the Treaty, was still in a sense to be a separate document binding three classes of Powers: Germany, which by the Treaty agreed to the Covenant, but did not join the League; other Signatories which were parties to the whole Treaty including the Covenant and thus (upon ratification) became Members of the League; the Invited Powers which were not bound by the Treaty, as a treaty, but upon accession became bound by that part of the Treaty which constituted the Covenant. In the final result, the Covenant was a document within a document, a treaty within a treaty; yet at the same time a separate and independent agreement, at least so far as some States were concerned.

I do not recall any precedent even remotely similar in international documents. And the technical features of the situation are all the more curious when one remembers that the Treaty of Versailles and the other Peace Treaties, to which the Neutrals were not parties at all, contained numerous references to the League and the Council. The Covenant is a part of three other Peace Treaties as well as a part of the Treaty of Versailles, although this resulted in some lack of precision in Article 5 which speaks of the "present Treaty" because, literally read, "present Treaty" would be four different Treaties. But the fact that the Covenant appears in the Treaties of Peace other than the Treaty of Versailles is not a mere formality of repetition, because China refused to sign or ratify the Treaty of Versailles and still signed and ratified the Treaty of St. Germain-en-Laye, thus becoming a Member of the League through that Treaty.

Indeed the more the matter is examined, the more extraordinary it appears, for the Covenant contemplates still another class of Members of the League, in addition to the three mentioned above, namely, those admitted to membership afterwards. Some of those States have no relation whatever to the Treaties of Peace and are not even named in them, for example, the Baltic States. Still others are the former enemy States themselves, Austria and Hungary and Bulgaria and Germany, Signatories to the Peace Treaties, bound by the provisions of the Covenant, but not Members of the League until admission. Furthermore, Members may withdraw from the League. If a withdrawing Member was a Signatory to the Treaty of Versailles it remains upon withdrawal bound by all of that Treaty except the Covenant; at least this

would be true of any Signatory except one of the former enemy States which had subsequently become a Member of the League; the situation of such a State would perhaps be just the same in its relation to the Covenant as it was between ratification of the Peace Treaty and admission.

Moreover, the Covenant is an entirely separate Treaty, at least in this sense, that it may be and has been amended and the amendment of the Covenant is a matter which concerns the Members of the League, as such, and not at all the Signatories of the Treaty of Versailles, as such, although to some extent the two are the same. We have seen, for example, that an amendment to the Covenant desired by substantially all the Members of the League was (for some time) completely blocked by the action of Spain, not a Signatory of the Treaty of Versailles, but acting as a Member of the Council of the League.

But as I said, in March, 1919, just how all these technical matters of procedure were to work out was undetermined. Hurst's draft Protocol of Acceptance contemplated the Covenant as a part of the Treaty. It speaks of the Covenant as being inserted "in the Treaty of Peace of even date," yet it provided for separate acceptance of membership in the League; but its coming into force would doubtless have depended on the ratification and other clauses of the Treaty; for certainly acceptance of membership in the League required parliamentary or legislative approval, according to the constitutional practice of many countries besides the United States, including the British Dominions, as the Memorandum of Sir Robert Borden indicates.[1]

It is to be emphasized, however, that at this stage questions of form were all matters for discussion. Prior to this time, no draft of the Covenant had contained any procedural clause regarding the method by which the invited neutrals would become Members of the League. The draft of Hurst and myself contained such a clause as the first paragraph of Article 26, following my own draft clause written on March 22;[2] but neither the Commission nor any sub-committee had yet considered it. The whole question was somewhat dependent upon the form of the Treaty of Peace as a whole, the ratification clauses which it should contain and the provisions regarding its coming into force. These were matters to be determined later.

The printing of the draft of Hurst and myself for the

[1] See p. 362.
[2] See p. 319.

Drafting Committee (Document 28) was finished on March 31 and late that afternoon I discussed it with Colonel House in connection with the memorandum regarding it which I had prepared and which is quoted above. I told Colonel House that the Japanese amendment (Article 12a)[1] was impossible in my opinion and he agreed that it should go out. He also said that he was opposed to the Financial amendment [2] as I was and that it should not go in and further that the Labor amendment [3] should be rejected as there was enough in the Covenant regarding Labor already.

It was at this time that the Red Cross Amendment, which is now Article 25 of the Covenant, was first mentioned. Colonel House handed me a letter to him on the matter from Mr. Henry P. Davison, Chairman of the Committee of Red Cross Societies, reading as follows:

> The suggestion which Mr. Rublee will present to you comes formally from the Committee of Red Cross Societies, of which I am Chairman, and has the cordial approval of some of the leading specialists of the world. I am sure the suggestion will please you and that it will, if possible, be incorporated in the Covenant.

This letter contained two alternative drafts in the following form:

> 1.
>
> The conservation of the public health throughout the world being of vital concern to every nation and essential to the fullest enjoyment of the blessings of peace, the principle of international cooperation through the action of national Red Cross organizations to the end of securing better conditions of health is hereby approved and the high contracting parties agree to encourage and promote the establishment of such cooperation.
>
> 2.
>
> The high contracting parties hereby declare that the betterment of the health and physical welfare of mankind is a matter of general concern among all nations and essential to the fullest enjoyment of the blessings of peace, and each of the parties hereto undertakes that in addition to governmental and other appropriate agencies for work in this field in the respective countries it

[1] Quoted at p. 392.
[2] See pp. 394, 395 *sq.*
[3] See p. 396.

will sanction and encourage as a voluntary organization the establishment and operation of a National Red Cross organization with the exclusive right to the use of the sign of the red cross and with authority to carry on such voluntary work as may be appropriate and within the limits of its resources for the improvement of public health and for the restriction and prevention of disease, and mitigating suffering caused thereby, as well as by famine, fire, floods and similar calamities; furthermore, the National Red Cross organizations shall be authorized to combine with each other in an International Red Cross League to work together for the purpose of bringing within the reach of all mankind the knowledge and assistance and advantages which the progress of science and education and the material resources in each country may be able to contribute for the benefit of all.

The high contracting parties further declare that the activities and interests of the International Red Cross League must be wholly non-political and non-governmental, but they agree to facilitate so far as is appropriate the work undertaken by the International Red Cross League for the purposes above set forth.

Colonel House asked me what I thought of it. I told him that I thought well of the idea, though I did not believe in loading down the Covenant with extraneous things. It was my view at the time that every additional clause involved a possibility of opposition or criticism and that mostly additions were unnecessary. Furthermore, the shorter the Covenant could be kept, the better. The proposed Financial clause is a good illustration of the soundness of this view. Harmless enough in itself perhaps, in the British form, it would probably have been misrepresented as having some relation to the Interallied Debts in accordance with the French hope regarding them; and events have shown that it was utterly unnecessary, for without any financial clause in the Covenant, the League was able to bring about the rehabilitation of Austrian and Hungarian finances and to prepare in fact, though not in name, the Dawes Plan. The general welfare clauses of the Covenant were sufficient to permit the work of Sir Arthur Salter, just as they were sufficient to permit the work of Nansen, of Morgenthau and of Howland.

However, the Red Cross was rather in a class by itself as an international organization. For fifty years and more it had worked with extraordinary success and the beneficence of its purposes had met with world-wide recognition. Under the circumstances, I thought that a clause regarding the Red Cross in the Covenant might be of advantage, although it is interesting to re-

call that various American statesmen of the 1870s or thereabouts opposed American cooperation with the Red Cross as an "entangling alliance" or even because of the Monroe Doctrine![1] I thought, however, that even the shorter of Mr. Rublee's drafts was too long and I recast the proposal as an additional clause (f) of Article 19 as follows:

> (f) will encourage and promote the establishment and cooperation of voluntary national Red Cross organizations having for their purpose the improvement of public health, the prevention of disease and the mitigation of suffering throughout the world.

The Drafting Committee reported to the Commission on the League of Nations the text of the Covenant in English only. The *final* form of this text as reported is Document 30.

The Drafting Committee held three meetings, on the morning and afternoon of April 1 and on the afternoon of April 2; the meetings were held at the Hotel Astoria and there were present as members of the Committee, Lord Robert Cecil, M. Larnaude, M. Veniselos and myself (in place of Colonel House). There were also present Mr. F. L. Warrin Jr. as my assistant and for the British, Mr. Hurst, Mr. Philip Baker and Major J. R. M. Butler; and for the French, M.M. Clauzel, de Lapradelle and de Sillac.

The French laid before the Committee a suggested rearrangement of the Articles in more logical order as follows:[2]

PREAMBLE

I

Composition de la Société, admission, sortie.
Articles 1, 24 (§2) et 26.

II

Organes, siège, procédure.
Articles 2, 3, 4, 5, 6, 7, et 25.

III

Règles destinées à assurer le maintien de la paix.
Articles 8 à 17 inclus.

IV

Régime des traités.
Articles 21, 22, 23.

[1] See *Life of Clara Barton*, by W. E. Barton, vol. ii. pp. 137, 150.
[2] The Article numbers here are those of Document 28.

V

Administration des intérêts internationaux.
Articles 18, 19, 20.

VI

Dispositions diverses.

VII

Revision du Pacte.
Article 24 (§1).

The British submitted to the Committee a detailed paper of proposed changes (Document 29), some very trivial, a few of more importance; there were included in this paper in one form or another various amendments which the Commission had accepted in principle, two of which had not been included in the revision made by Hurst and myself;[1] the most interesting of all the British proposals perhaps was to substitute "Assembly" for "Body of Delegates." This was the first time that this suggestion had appeared[2] and the Committee accepted it. Indeed, most of these British suggestions went into the Committee text. It may be noted here that the references in this British paper to Article numbers, text etc. are to the Hurst-Miller revision (Document 28) which was, indeed, the basis of discussion by the Drafting Committee.

The proceedings of the Commission at its three March meetings were of course before the Drafting Committee. Those proceedings had changed the February 14 text considerably and, as I mentioned above,[3] an attempt had been made to incorporate these changes so as to show to the Drafting Committee the text as it stood at the close of March 26 (Document 27). However, that draft could not, or at least did not, incorporate all the various references to the Drafting Committee; neither were *all* these references [1] included in the Hurst-Miller revision (Document 28); but they were all before the Drafting Committee and were all considered.

What the Drafting Committee did was to go over the English text word by word; using the revision of Hurst and myself (Document 28) as a basis, changing it some and incorporating generally the drafting changes contained in the British suggestions (Docu-

[1] See p. 395 *sq.*
[2] I suppose it was suggested by the phrase in French "Assemblée des Délégués."
[3] See p. 352 *sq.*

ment 29), the Committee agreed on the new text, discussing at length only two or three proposals which require special mention.

The first meeting of the Drafting Committee on the morning of April 1 got through Article 11. The afternoon meeting was a short one; it did not commence till four o'clock; Hurst was not present and during the consideration of Article 15 we had to adjourn on account of an engagement of Larnaude.

The Committee had a great deal of difficulty with Article 15. The question was what clause, if any, should be put in to provide for a case of non-unanimous report by the Council regarding an international dispute.[1] One British draft written out during the meeting, was this:

> If the Council fail to make a unanimous recommendation, the members of the League reserve the right to take such action in support of the opinion of the majority as they may think fit.

After this afternoon meeting, I talked with Cecil for a while about various matters. We discussed Article 10, which he did not like and which I defended. We also talked about our difficulty with Article 15. I drew up an amendment then, which I showed to Cecil thus:

> If the report is not unanimous in the said sense, the members of the League shall have complete liberty of action.

Cecil said it was his idea, but "brutally put" and then he wrote out the same idea in other language:

> If the report is not unanimous, the provisions of this Article shall have no further effect.

We left Article 15 for further consideration. I showed Cecil the proposed amendments of Mr. Root which I have quoted and discussed above.[2] Cecil did not like them at all; he went so far as to say that he would rather have no Covenant than have one with those amendments.

The next day I had some further talk with Cecil about Article 15. Cecil came to the conclusion that both the proposals as to Article 15 which are printed in the British suggestions (Document 29) should be embodied in the text. However, what the Com-

[1] See p. 396.
[2] p. 377 *sqq.*

mittee finally did that afternoon was to pass both amendments [1] back to the Commission on the League of Nations, printing them again in parenthesis (as will be seen from Document 30) so as to show that they were brought forward by the Committee.

That afternoon the Drafting Committee finished its work and got through the English text. The only question particularly discussed, other than Article 15, was the so-called Swiss amendment, requiring the request of the Council for the passage of troops pursuant to Article 16. The text of this may be seen in Document 29. I opposed this amendment and the committee rejected it, Larnaude taking my view. I shall discuss this proposal and my views of it in detail elsewhere.[2]

One change which was made by the Drafting Committee was the addition of this entirely new paragraph in Article 16:

> Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon.

Article 14, regarding the Permanent Court of International Justice, reached its final form at these meetings of the Drafting Committee. In the account of the proceedings of the Commission at its Twelfth Meeting on March 24 the action taken by the Commission on this Article was discussed in detail;[3] and I have shown above [4] how this Article was written in the revision of Hurst and myself.

The first sentence of the Hurst-Miller revision before the Committee read:

> The Council shall formulate plans for the establishment of a Permanent Court of International Justice.

Substantially in accordance with the British suggestion (Document 29) this sentence was changed so as to read:

> The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice.

[1] With a verbal change of "shall" to "should" in the first amendment.
[2] See Chapter XXXI.
[3] See p. 328 *sqq.*
[4] See p. 391 *sqq.*

The change made it clear that the establishment of a Court was to be the subject of a separate Treaty. Then followed the words:

> The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it.

These words were left unchanged as a separate sentence. Then followed in the Hurst-Miller revision this language:

> and also to advise upon any legal questions referred to it by the Council or by the Body of Delegates.

which read in the later British suggestion:

> and also to advise upon any dispute or question referred to it by the Council or by the Assembly.

This language the Committee changed, making it into a separate sentence reading:

> The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

This change has significance. The power to give advisory opinions is stated separately and not as a part of the primary jurisdiction of the Court. Again, the expression "advisory opinion" is used instead of the word "advise," indicating that the function to be exercised is a judicial one. Finally it may be pointed out, as some doubt on the point has been raised, that this language was unquestionably written in English before it was put into French at all. I repeat that the Drafting Committee reported an English text only and this was part of that English text.

The Committee had accepted in principle Larnaude's proposal of arrangement,[1] leaving it to Hurst and myself to see that it was carried out in the print. This we did the next day (April 3) and at the same time we adjusted some slight discrepancies between the American and British notes as to the exact language adopted by the Drafting Committee and made a few other trivial and verbal changes.

[1] See p. 402 *sq.*

The Red Cross Article had made no trouble in the Drafting Committee, where it was accepted as a separate Article in the following language:[1]

> The Members of the League agree to encourage and promote the establishment and cooperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of public health, the prevention of disease and the mitigation of suffering throughout the world.

This differed slightly in form from my earlier draft quoted above,[2] particularly by the insertion of the words "duly authorized." The change was made because Mr. Rublee wanted the draft which I had made revised. He came in to see me just before the last meeting of the Drafting Committee and suggested the following language:

> The States Members of the League will also encourage and promote the utilization and cooperation of duly recognized voluntary national Red Cross organizations for the improvement of public health, the prevention of disease and the mitigation of suffering throughout the world.

For some reason which was not clear to me Mr. Rublee thought it was of great consequence that the word "recognized" should be used in the Article, although it was quite inappropriate in connection with a voluntary Society.

However, this matter of the Red Cross Article remained for a good deal of consideration *after* the Drafting Committee adopted it in the form above quoted as Article 23. It developed that the Red Cross officials had submitted their original lengthy and impossible proposals [3] to the British some time before March 26 and the British Ministry of Health were quite concerned lest voluntary organizations like the Red Cross might be permitted to undertake national responsibility in health matters. Some of

[1] The French text proposed at the Drafting Committee was, like the English, in the form of an addition to Article 19 (which became 22, see Document 30) and read as follows:

> Ajoutez à l'Article XIX:
>
> (f) encourageront et favoriseront l'établissement et la coopération des organizations volontaires nationales de la Croix Rouge, dûment autorisées et ayant pour objets l'amélioration de la santé publique, les mesures preventives contre la maladie et le secours aux souffrances dans le monde entier.

[2] At p. 402.

[3] See p. 400 *sqq.*

the British correspondence between Sir Michael Delevingne and Sir George Newman was laid before me and, on April 5, Major Astor, who had come over from London for the purpose, came to see me with Mr. Philip Baker regarding this Red Cross amendment. They thought that the Article went too far and might be claimed to take governmental matters out of the control of the Governments. They proposed a redraft which read as follows:

> The Members of the League agree to take steps for the improvement of the health of their peoples, the prevention of disease and the mitigation of suffering throughout the world, and to promote for these purposes joint action in matters of international concern between the several national Governments. To this end they will also encourage and promote the establishment and cooperation of duly authorized national Red Cross and other organizations for the above purposes.

To this I objected as going rather farther than the Red Cross amendment as it then stood in the direction to which the British objected, namely, non-governmental control of matters of public health, an objection with which I had every sympathy. Accordingly I suggested in place of the British redraft to strike out the word "public" from the text of the Red Cross Article, which was accepted. The British then requested that there should be added a paragraph (f) to Article 22 which we finally agreed on as follows:

> (f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Finally the British wanted the position of the Red Cross Article changed so that it would be Article 24 instead of 23 and I agreed to this, not seeing that the transposition could make any possible difference. These changes were accepted by Cecil and Hurst and the text of the Drafting Committee (which had already been printed) was reprinted in accordance with the changes. This *final* text from the Drafting Committee is Document 30.

It was on April 3 that Hurst and I had gone over the Covenant together to make up the text as the Drafting Committee had adopted it, with the changes and rearrangement [1] which I have mentioned above, but of course without the subsequent changes in connection with the Red Cross Article. This text [2] was finally

[1] For a note on the Numbering of the Covenant Articles, see p. 469 *sqq.*

[2] Except for what may be called the Red Cross changes, this text is exactly the same as Document 30.

printed on the evening of April 3 and the next morning copies were sent to Hurst and also to Larnaude and Veniselos. At the same time I sent to Hurst some copies of a draft of the Annex to the Covenant which I had gotten up at his request. This, I think, was the first draft of an Annex which was printed and as will be seen it was very similar to the Annex to the Covenant in the Treaty of Versailles:

ANNEX TO THE COVENANT

I. SIGNATORIES

ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS

United States of America.
Belgium.
Bolivia.
Brazil.
British Empire;
  Australia,
  Canada,
  India,
  New Zealand,
  South Africa.
China.
Cuba.
Czecho-Slovakia.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serbia.
Siam.
Uruguay.

II. STATES NOT SIGNATORIES

INVITED TO ACCEDE TO THE COVENANT

Argentine Republic.
Chili.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.

III. THE SECRETARY GENERAL OF THE LEAGUE

[name to be inserted]

On the previous day (April 3) I had prepared for Colonel House this cable to Senator Hitchcock to give him a summary

of the principal changes in the text of the Covenant since the draft of February 14:

After meetings of the Neutrals and subsequent meetings of the Commission on the League of Nations, the Drafting Committee of that Commission has prepared its report of a new draft of the Covenant. The most important changes and additions follow:

(1) The Executive Council is called Council.
(2) The Body of Delegates is called Assembly.
(3) The provisions have been rearranged and generally redrafted.
(4) Regarding the Body of Delegates there is the following provision:
"At meetings of the Assembly, voting shall be by States; each Member of the League shall have one vote, and may have not more than three Representatives."
(5) There is a provision similar to (4) as to the Council except that each State has only one Representative.
(6) There is the following provision in Article v:
"Except where otherwise expressly provided in this Covenant, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the states represented at the meeting."
(7) There is the following provision in Article vii:
"All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women."
(8) Article x is unchanged.
(9) There is a specific provision in Article xv that in the event of a report of the Council which is not unanimous in the sense there mentioned, the Members of the League reserve the right to take such action as they consider necessary for the maintenance of right and justice.
(10) There is a provision in old Article xix, now xxi, second paragraph, after the word "responsible," as follows: "and who are willing to accept it."
(11) Article i contains the following provision:
"Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal."

(12) Article XV contains the following provision:
"If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

This report of the Drafting Committee has not been presented to the Commission which meets [1] on April 8 and accordingly must to some extent be regarded as tentative.

A provision regarding the Monroe Doctrine has not yet been inserted.

I also prepared for President Wilson and sent to him on April 4 a memorandum on the Drafting Committee text. This memorandum, differing from the Hitchcock cable, was intended to show the changes in the text sent to the Drafting Committee (Document 27) and the text returned by the Drafting Committee (Document 30):

The order of the articles and paragraphs has to some extent been changed.

The word "Council" has been substituted for "Executive Council," and the word "Assembly" has been substituted for "Body of Delegates."

ARTICLE I

The first and third paragraphs of this article were formerly Article VII.

The fourth paragraph of this article was formerly the second paragraph of Article XXIV.

The second paragraph of this article is new.

ARTICLE II

This article was formerly Article I. Recast.

ARTICLE III

This article was formerly Article II. Recast.

ARTICLE IV

This article was formerly Article III. The last paragraph is new, corresponding to a similar paragraph regarding the Assembly, in Article III.

[1] The Commission did not meet until April 10.

ARTICLE V

This article was formerly Article IV.

ARTICLE VI

This article was formerly Article V, omitting the provision regarding the Seat of the League.

ARTICLE VII

This article incorporates former Article VI and includes also a provision regarding the Seat of the League and former Article XXV.

Articles VIII to XVII, inclusive, have the same numbers as formerly.

ARTICLE VIII

This article has been changed in form but, it is believed, not in substance.

ARTICLE IX

There is no change except that due to the renumbering of the articles.

ARTICLE X

This article is unchanged from the former draft.

ARTICLE XI

In the last sentence of the first paragraph will be found incorporated the French amendment.

ARTICLE XII

The changes in the language and the omissions are in accordance with the action of the Commission.

ARTICLE XII-A

This article is printed in brackets as the Drafting Committee will recommend its reconsideration by the Commission.

ARTICLE XIII

An enumeration of certain disputes which are generally deemed justiciable is contained in the second sentence of the first paragraph.

There is also inserted in this article an express covenant against going to war.

ARTICLE XIV

A clause is added permitting the Court to give an advisory opinion, and the language has been recast so as to obviate any suggestion of compulsory arbitration.

ARTICLE XV

This article has been recast. Two substantive amendments which will be proposed by the Drafting Committee are printed in brackets.

The American amendment is now the seventh paragraph of the article and has been very slightly changed in verbiage, making it probably somewhat broader in meaning.

The last paragraph of this article incorporates the Greek amendment.

ARTICLE XVI

The last paragraph of this article is new.

ARTICLE XVII

The changes made are verbal.

ARTICLE XVIII

This article was formerly Article XXI with some verbal changes.

ARTICLE XIX

This article was formerly Article XXII and has been very slightly changed.

ARTICLE XX

This article was formerly Article XXIII. There are a few drafting changes.

ARTICLE XXI

This article is former Article XVIII without substantial change.

ARTICLE XXII [1]

This article is in substance former Article XIX with a slight change in the language in the first paragraph and with an addition to paragraph (a).

ARTICLE XXIII

This article is new and was proposed by Colonel House.

[1] The further addition to this article, and the slight change in the next (Red Cross) article, which became XXIV, Article XXIV becoming XXIII, have been mentioned at p. 407 *sq.* These changes were made on April 5 and Mr. Wilson was informed of them by letter on the same date.

ARTICLE XXIV

This article is former Article XX with some drafting changes.

ARTICLE XXV

This article was formerly the first paragraph of Article XXIV.

About the same time the text of the following report of the Drafting Committee regarding Article 12a, the Japanese amendment, came in from Cecil and this of course was sent up to Wilson also:

SUGGESTED MEMORANDUM ON THE PROPOSED ARTICLE XII-A

Circulated to the Drafting Committee

At its 12th meeting, the Commission adopted the following amendment proposed by the Japanese Delegation:

> "From the time a dispute is submitted to arbitration or to enquiry by the Executive Council, and until the lapse of the aforesaid term of 3 months, the parties to the dispute shall refrain from making any military preparations."

Although this amendment was adopted by the Commission, the Drafting Committee feel that the objections to it are so strong that the question of its insertion in the Covenant should be reconsidered. The objections are set out as follows:

1. To forbid preparations during the moratorium is to encourage secret preparations previously. Such secret preparations will have been made by a nation that meditates aggression, but not by a peaceful nation. To forbid preparations during the moratorium would therefore benefit the intending aggressor, and damage the innocent party.
2. It would be impossible to distinguish between immediate preparation for war and the continual preparation for war in which the normal training of the fighting services consists. An unscrupulous nation, itself ready for war, might therefore pretend that an unprepared nation which took the smallest step to organize its powers of self defence during the moratorium had broken the Covenant, and might make this a pretext for attacking it.
3. Article VIII already provides that the limits of armaments proposed by the Council and adopted by the several Governments shall not be exceeded without the concurrence of the Council. This provision covers the period of the moratorium, and goes as far as seems desirable.

In short, the effect of forbidding military preparations during the moratorium is to stimulate preparations for war in peace, and to benefit the deliberate aggressor.

The British also prepared this Note on the Drafting Committee text, which was circulated by the Secretariat on April 7 to the members of the Commission along with the Committee report on Article 12a:

NOTE BY THE BRITISH DELEGATION ON THE REDRAFT SUBMITTED BY THE DRAFTING COMMITTEE

Article I. This Article is a redraft of the old Article VII; as directed by the Commission it now contains the necessary provisions to admit of the adherence of the Neutrals. It also contains the amendment allowing a State to withdraw from the League on giving 2 years' notice.

Article II (old Article I) and throughout the Covenant "Council" has been substituted for "Executive Council," and "Assembly" for "Body of Delegates," as being more accurate terms.

Article III (old Article II). The arrangement of this article has been altered; there is no change of substance, except to state clearly that the Assembly may deal with any matter affecting the peace of the world.

Article IV (old Article III). The redraft makes clearer the distinction between permanent and non-permanent members of the Council, and the fact that any addition to either class requires approval of the majority of the Assembly.

In the 5th paragraph, it is made clear that States specially invited shall only sit as members during the discussion of the matters specially interesting them.

The last paragraph limits the number of representatives on the Council to one per State, for reasons of practical convenience.

Article V (old Article IV). No change.

Article VI (old Article V). The redraft embodies the amendment giving the actual right to elect the Secretary General to the Assembly. The mention of the Seat of the League is transferred to Article VII.

Article VII (old Article VI). The amendment declaring the equal eligibility of men and women for service on the Secretariat and other bodies under the League is inserted as part of this Article.

Article VIII. The redraft embodies the amendment providing that the scheme for disarmament shall be liable to revision at least every 10 years. There are no other changes, except in the matter of wording and arrangement.

Article IX. The redraft embodies the amendment substituting "Council" for "League," and including a reference to Article I (previously Article VII).

Article X. No change.

Article XI. The amendment adopted by the Commission has been inserted, instructing the Secretary General to summon a meeting of the Council on the request of any member of the League, in case of emergency.

Article XII. This Article has been reworded in accordance with a more logical arrangement, and shortened by the omission of the last clause of the last paragraph, the provisions of which now find their place in Articles XIII and XV.

Article XIIa. A Memorandum by the Drafting Committee on the subject of this Article, which was adopted by the Commission, is circulated herewith.

Article XIII. A clause, provisionally adopted by the Commission, has been inserted, declaring that certain classes of international disputes are, among others, generally suitable for arbitration.

This amendment goes some way to meet the opinion, widely and strongly held in England and the leading Neutral Countries, that the provisions of the Covenant with regard to the settlement of disputes by arbitral process are not sufficiently progressive. It has been largely argued that the provisions of the Covenant as originally published were, in this particular direction, actually retrogressive as not sufficiently recognizing the distinction evolved in recent years between justiciable and non-justiciable disputes.

Article XIV. The amendment adopted by the Commission giving the Council and the Assembly power to refer any dispute to the Permanent Court for advice, has been inserted.

This power will be indispensable for the settlement of some classes of disputes; but of course the opinion of the Court will have no force or effect unless confirmed by the Report of the Council or Assembly. It therefore in no way introduces the principle of obligatory arbitration.

Article XV. Apart from purely drafting amendments, the following alterations are made in the redraft:

(1) A clause (printed in brackets) has been provisionally inserted in paragraph 5, instructing the Council to consider what steps, if any, shall be taken to enforce its unanimous recommendation in the case in which one of the parties to a dispute, while not going to war against the recommendation, yet fails to comply with it.

The reinsertion of such a clause seems essential if the unanimous recommendation of the Council is not to be less effective than an arbitral award; in which case a State which knew it was

in the wrong would always elect to go before the Council rather than before arbitrators, as the decision of the former could not be enforced while that of the latter could. This would be a most unfortunate result, as it is desirable to encourage a resort to arbitration whenever possible.

(2) Another clause (printed in brackets) has been provisionally inserted as paragraph 6, by which, in the event of the Council failing to arrive at a unanimous decision, the members reserve complete liberty of action.

This amendment recognizes the right of States, in the last resort, to take up arms on behalf of the party which they believe to be the victim of aggression, whether their opinion is shared by the majority of the Council or not. This recognition is really in the interests of international justice, and, as a matter of fact, it only gives the sanction of the Covenant to what would probably take place.

(3) The amendment adopted by the Commission excluding from the competence of the Council any dispute found by it to arise out of a matter solely within the domestic jurisdiction of one of the parties has been inserted.

(4) The amendment adopted by the Commission providing that a report by the Assembly, if concurred in by all the States represented on the Council and a simple majority of the other States, shall have the force of a unanimous report by the Council, has been inserted.

Article XVI. A new final paragraph has been inserted to meet the case of a State which after breaking its Covenant still claims to vote on the Council or in the Assembly.

Article XVII. No change of substance.

Articles XVIII-XX (old Articles XX-XXIII). No change of substance.

Article XXI (old Article XVIII). No change of substance, except that the amendment providing that no state shall be compelled to accept a Mandate has been inserted.

Article XXII (old Article XIX). This Article has been redrafted so as

(1) to make it plain that the States of the League are only bound to the extent of such conventions as they may have agreed to with regard to the matters mentioned.

(2) to give the organization to be set up by the Labour Convention the prestige of mention in the Covenant in accordance with the desire of the Labour Commission.

(3) to make specific mention of the treatment of natives, the White Slave and Opium Traffics, and the prevention of disease.

Article XXIII (old Article XX). The redraft allows for the inclusion of existing and future international organizations under the direction of the League. Further, the sphere of possible usefulness of the Secretariat is given a wider scope by the wording of the redraft, and the Council is empowered to include the expenses of any bureau or commission under the direction of the League in those of the Secretariat.

Article XXIV. This Article is inserted to facilitate cooperation between the various national Red Cross bodies.

Article XXV (old Article XXIV, first paragraph.) The redraft embodies the amendment by which only a simple majority of the Assembly is required, in addition to the unanimous approval of the Council, for amendments to the Covenant.

A few days were to elapse before the Report of the Drafting Committee was to be considered by the Commission on the League of Nations, which held its Fourteenth Meeting on April 10. So far as the Drafting Committee was concerned, its work was finished. We had prepared a definitive text of the Covenant (Document 30); even a tentative Annex had been drafted. It had been supposed, by myself at least and I think by others, that the Drafting Committee would also bring in a French text; but this took another course as will be told more fully later.[1]

Aside from the question of the French text, one other matter remained to be determined. Most of the American criticisms had been met by amendments drafted in line with the views of the critics; withdrawal, domestic questions, unanimity in the Council and in the Assembly, and the rather absurd idea that a country might be compelled to accept a Mandate, had all been covered. Article 10 remained unchanged despite the criticisms; but here Mr. Wilson was unwilling to modify his position. There was left, however, the Monroe Doctrine question; the Drafting Committee had had nothing to do with this for no amendment covering the point had yet been submitted. Wilson was determined to present such an amendment in some form; he had prepared one draft and had withheld it for the time; he wanted if possible first to have the British assent to it in form as well as in substance. The negotiations of the next few days which relate to this matter, so far as I am familiar with them, will be told in the next Chapter.

[1] See p. 511 *sqq.*

CHAPTER XXX

A PROPOSED NAVAL AGREEMENT

On April 9, I received various papers relating to the question of a naval agreement between the United States and Great Britain. One of these was this letter from Lord Robert Cecil to Colonel House dated April 8:

British Delegation
Paris

April 8, 1919.

Confidential

My Dear Colonel House:

I have found in exalted quarters that some of the recent utterances by high officials connected with the United States Navy have produced a very unfortunate impression. Very possibly they have been misunderstood, but they have in fact conveyed the idea that the naval policy of America is one of expansion; that the American ambition is to have a navy at least as strong or stronger than that of the British Empire, and so on. It is urged with some force that such an attitude is wholly inconsistent with the conception of the League of Nations, and that if it really represents the settled policy of the United States it could only lead sooner or later to a competition in arms between us and them. To inaugurate the League of Nations by a competition in armaments between its two chief supporters would doom it to complete sterility or worse. I cannot help feeling that there is a great deal of force in this contention, and I do believe that in some way or another the impression I have tried to describe ought to be removed if the League is to have a fair start. The position is undoubtedly complicated by the British sentiment about sea power. It has been now for centuries past an article of faith with every British statesman that the safety of the country depends upon her ability to maintain her sea defence, and like all deep-rooted popular sentiments it is founded on truth. Not only have we dominions scattered over the face of the world, each of which requires protection from the sea, but the teeming population of the islands of the United Kingdom can only be fed and clothed provided the avenues

of sea traffic are safe. We import four-fifths of our cereals, two-thirds of our meat, the whole of our cotton and almost the whole of our wool. If we were blockaded for a month or less we should have to surrender at discretion. That is not true of any other country in the world to the same extent. Least of all is it true of the United States, which could, as far as necessaries of life are concerned, laugh at any blockade.

I think you will believe me when I say that I am passionately desirous of Anglo-American friendship, and a convinced believer in its existence and durability, but I must freely admit that if I were British Minister of the Navy and I saw that British naval safety was being threatened, even by America, I should have to recommend to my fellow countrymen to spend their last shilling in bringing our fleet up to the point which I was advised was necessary for safety. I do not of course ask you to accept these views, but I do ask you to recognize their existence. I do not know whether in your country you have any traditional policy around which popular sentiment has crystallized in a similar way, but if you have you will be able to appreciate the kind of British feeling that exists on this point.

You have sometimes been good enough to invite me to speak to you frankly as I would to one of my own countrymen, and in that spirit I venture to ask you whether you could do anything to reassure us on this point. Would it be possible, for instance, for you to say that when the Treaty of Peace containing the League of Nations has been signed you would abandon or modify your naval programme? I am sure that the British Government would be only too ready to give corresponding assurances. That would be what the French call a "beau geste" with which to inaugurate the League; and if you could also intimate, however informally, that the two governments would consult together from year to year as to their naval programmes, and that the British sentiment on the matter would not be disregarded I feel confident that the present very genuine anxieties on the point could be completely removed.

Yours very sincerely,

ROBERT CECIL.

Another was a letter from House to Lloyd George under the same date. This original letter, however, in the papers which I received, was with a note of Sir William Wiseman of the same date to House reading: "I enclose your letter to the P. M. and R. C.'s draft for your consideration," so I think that the letter from House to Lloyd George, the text of which follows, had not been delivered and that perhaps it was not delivered at all, being replaced by the letter finally written to Cecil by House, mention of which is made hereafter:

COMMISSIONER PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA

Paris, 8 April 1919

DEAR PRIME MINISTER:

When I asked you yesterday what, if any, objection you had to the clause which I submitted regarding an affirmation of the Monroe Doctrine, you told me as you have told me before, that you could not consent without first coming to an agreement with the United States regarding our naval building programme. I cannot see what connection the two matters have. If the kind of peace is made for which we are working and which will include a League of Nations it will be necessary for us all to live up to its spirit and to do this it will be inconsistent to continue to increase armaments either by land or sea. Therefore it seems that your doubts answer themselves and to reach the objective you have in mind it is only necessary to put into force as soon as possible a League of Nations. To do this it may be essential that specific reference be made to the Monroe Doctrine, otherwise there is danger that the Senate of the United States may reject it. I understand that no one but you has raised any objection to our proposal, and I hope, my dear Prime Minister, that you will not further insist upon the point you have raised.

Sincerely yours,
E. M. HOUSE.

THE RIGHT HONORABLE
D. LLOYD GEORGE, M. P.
23 RUE NITOT, PARIS

While I am not familiar with the details of earlier negotiations between Lloyd George and House, there is no doubt that they had been going on for some time. On March 7 at a meeting between Lloyd George, Clemenceau and House the British Prime Minister proposed

> that a share of the German Fleet should be handed over to France to recoup her for her losses and for the cessation of naval construction imposed on France by the War. The British and American shares would be sunk in some manner to be arranged simultaneously in Mid-Atlantic as part of an Anglo-American understanding about naval armaments;

and on March 10 at a similar meeting Lloyd George spoke of the sinking of the ships and the necessity for an agreement between England and America not to rival each other in naval building.

The draft of "R. C.," mentioned in Wiseman's note, which was in Cecil's handwriting, was for a letter, or rather for part of a letter, to be written by House to Cecil in answer to the letter of April 8 above quoted:

> Many thanks for your letter with the spirit of which I am in hearty agreement. Indeed, I have already written to Mr. Lloyd George, who had spoken to me on the subject, that once the League of Nations was part of the treaty of peace it will be necessary for all of us to live up to its spirit and to do this it will be inconsistent to continue to increase armaments either by land or sea. That is as I have ascertained also the view of the President. In the same way it will be part of our duty under the Covenant to interchange information as to our naval programmes and I should hope that in the case of America and England that obligation will be carried out in cordial cooperation. You will not forget in this connection the recognition by the President of Great Britain's special position as to sea power.

My instructions were to prepare a draft answer to the letter of Cecil with a memorandum on our Naval Appropriation bills and an expression of my own views. These were prepared at once and were submitted to House that afternoon. What I wrote about the Naval Appropriation bills was this:

> The Act of August 29, 1916, provided for the following construction, "prior to July first, nineteen hundred and nineteen":
>
> | | |
> |---|---|
> | Battleships | 10 |
> | Battle cruisers | 6 |
> | Scout cruisers | 10 |
>
> Of these there were "to be begun as soon as practicable,"
>
> | | |
> |---|---|
> | Battleships | 4 |
> | Battle cruisers | 4 |
> | Scout cruisers | 4 |
>
> The Act of March 4, 1917, provided that of the foregoing vessels authorized construction of the following should be "begun as soon as practicable":
>
> | | |
> |---|---|
> | Battleships | 3 |
> | Battle cruisers | 1 |
> | Scout cruisers | 3 |
>
> It will be observed that this left for construction the following:
>
> | | |
> |---|---|
> | Battleships | 3 |
> | Battle cruisers | 1 |
> | Scout cruisers | 3 |

As to these the Act of July 1, 1918, which is the Naval Appropriation Act for the year ending June 30, 1919, provided that,

> The construction which has not heretofore been specifically directed to be begun shall be begun as soon as practicable, but not later than June thirtieth, nineteen hundred and nineteen.

The Naval Appropriation Act for the coming fiscal year failed at the last session and will come up again at the extra session.

I am, of course, not familiar with what has been actually done under the Appropriation Acts from whose very elaborate provisions I have quoted very briefly and without alluding to the construction of other types of vessels.

With that memorandum was the following statement of opinion:

> My own view is this:
>
> The result of the war, the enormous increase of the British fleet and the ending of the German fleet has created a situation where the British naval strength is out of all proportion to any question of defence. That strength is now greater than the strength of all the other navies of the world together.
>
> Such a situation is the result of events, not of design, but it is not healthy as a permanent condition in the world and should be changed, and the British should be told so plainly.
>
> American sentiment must be considered. To say: "We do not need as large a navy as Great Britain" may be accepted. To say: "The United States cannot be allowed to build as large a navy as Great Britain" would not go down with our people.

The draft which I wrote as an answer to Cecil from House is from one point of view not very material as it was not the letter which was sent. However, as it embodied my understanding of the ideas which House intended to convey, I reproduce it here:

> It is with great pleasure that I have read your note of April 8, expressing in some detail the desire of the British Government for an understanding with the United States as to naval programmes.
>
> This desire was mentioned to me by the Prime Minister when he said to me that he could not consent to the clause which I had submitted regarding an affirmation of the Monroe Doctrine without first coming to an agreement with the United States regarding our naval programme.
>
> I have been unable to see any connection between the two matters. If the kind of peace is made for which we are working and which includes a League of Nations, it will be necessary for us to live up to its spirit, and to do this none of us can consistently continue to increase our armaments either by land or sea. Therefore,

it is essential that we put in force as soon as possible a League of Nations, and as the Monroe Doctrine is a traditional policy of the United States around which popular sentiment has crystallized, specific reference to it in the Covenant may be necessary in order to avoid the danger that the Senate of the United States might reject the Covenant.

With your thought that a competition in armaments between the United States and Great Britain should be avoided I am in the most cordial accord. The present naval programme of the United States was originated by the Naval Appropriation Act of August 29, 1916, from which I venture to quote the following paragraph:

> "If at any time before the construction authorized by this Act shall have been contracted for, there shall have been established, with the cooperation of the United States of America, an international tribunal or tribunals competent to secure peaceful determinations of all international disputes, and which shall render unnecessary the maintenance of competitive armaments, then and in that case such naval expenditures as may be inconsistent with the engagements made in the establishment of such tribunal or tribunals may be suspended, when so ordered by the President of the United States."

While any modification of this programme, so far as it has not been actually commenced, is a question for Congress, that question will come up for consideration at the approaching extra session, as the Naval Appropriation bill for the coming fiscal year has not been passed.

With the corresponding assurances which you are sure that the British Government would be only too ready to give, I feel that it would be our policy to modify our programme so far as it relates to the future.

It also seems to me that in view of the provision in the Covenant for an interchange of information regarding naval programmes, the two governments would naturally and properly, from year to year, consult regarding them, taking into account the British sentiment on the matter and also, I may add, American sentiment.

I have read this letter to the President and it has his approval.

When I saw House in the afternoon he told me that he had changed my draft letter to Cecil because he wanted to limit only our future naval program. He said he had written the letter accordingly, which he showed me. I do not have a copy of it and can quote only its opening phrases:

> Thank you for your letter of April 8th with the spirit of which I am in cordial agreement. If the kind of peace is made for

which we are working and which will include a League of Nations, it will surely be necessary for us to live up to its intentions and in order to do this I am sure you will find the United States ready. . . .

I did not think that the letter as drafted by House was entirely clear in one respect and at his request I wrote an additional clause so as to make it explicit that it did not apply to any part of our naval program except that commencing with the next Naval Bill and thereafter.

The next day (April 10) I was informed that House's answer to Cecil had been taken up to the President on the previous evening, that the President had approved it and that the letter had been delivered.

That afternoon I saw Colonel House at 2:30. I told him that I had an appointment with Cecil at 3:30. He said that Cecil had told him that morning that the letter that he (House) had written about the naval program was not satisfactory to Lloyd George. House told Cecil that the two questions of the insertion of the Monroe Doctrine clause and the naval program had nothing to do with each other and that he would take the position that he had taken in everything over here; that the United States was not going to bargain but was going to take the position it believed to be right; that these were the instructions he had given to everybody when the question of bargaining had been brought up; that he did not want the letter on the naval program back, because it represented the policy of the United States; that the American amendment on the Monroe Doctrine would be presented at tonight's session, and the British could oppose it if they saw fit. He said that Cecil was very much impressed by what he said and seemed very much upset, and had said that he was disposed to quit the whole thing. House told him that the matter was too important for him to leave, that he (Cecil) was one of the few available rafts floating in the sea that could be used at all.

After referring to other matters, House said that I might mention the Monroe Doctrine amendment to Cecil as a matter of drafting. He handed me the amendment in the form in which he said it was to be proposed as follows:

ARTICLE X (a)

Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or re-

gional understandings like the Monroe Doctrine for securing the maintenance of peace.

This was the first time that I had seen this exact draft [1] which differed greatly from the draft Wilson had originally written.[2] I was not consulted as to its language.

When I saw Cecil we discussed various questions and I then spoke of the position of the Monroe Doctrine amendment which would be moved that night. I said I thought it should not go under Article 10. Cecil agreed that it should be a separate Article but he thought it should be next to the last Article. I do not mean that Cecil agreed to the amendment, for we only discussed its position if it should be adopted.

I returned to see Colonel House and reported to him my conversation with Cecil telling him that we had not discussed the Monroe Doctrine amendment except as above mentioned. House spoke of the naval question and while we were talking a note came in from Cecil with the memorandum which he was sending to the Prime Minister of his talk with House. Colonel House read the note and handed the papers to me and I read them out loud. The memorandum was perhaps the equivalent of one legal page of typewriting. It described the conversation between Cecil and House that morning. According to the memorandum House said that our naval program had been authorized a good while ago; that if it had not been for the delay caused by building a large number of small ships, destroyers, etc., it would all have been commenced by this time; that it had to a large extent either been commenced or contracts had been let; having been authorized by Congress it was very doubtful if the President had any say about it now. Cecil asked if the ships which had not actually been commenced might not be delayed until after the signature of the Treaty of Peace and House said that he would see what could be done about that. Cecil said that the remarks of Admiral Benson to the effect that we must have as large a navy as Great Britain had produced a bad impression; to which House replied that remarks made by some of the British naval officers had been equally unfortunate in their saying that now is the time to defeat America before her navy is too large. House said that it was very difficult to reach a proper understanding with the feeling in the two services, and he thought that con-

[1] Cf. the somewhat similar draft handed me by Wiseman on March 25 quoted p. 336.

[2] See p. 322.

versations about the size of the fleets should be commenced after the Peace Treaty, and that some relative figures of strength should be agreed upon.

House said that he would suggest that the reference to Admiral Benson be taken out, and I suggested that the words "American naval officers" be inserted. He then instructed Auchincloss to telephone Cecil to that effect; Auchincloss reported that Cecil said that a copy of the paper had gone to the Prime Minister, but he would have the language changed for the record.

That evening at the Fourteenth Meeting of the Commission on the League of Nations the Monroe Doctrine amendment was offered and passed.

CHAPTER XXXI

THE SWISS AMENDMENT

THE proposal called the Swiss Amendment was to insert a few words in the third paragraph of Article 16, the Sanctions Article,[1] so that it would read as follows, the amendment being in italics:

> The Members of the League agree that . . . *on the request of the Council* they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

The amendment was general in its terms. It would have applied to every Member of the League. The effect of it was this: In the event of the application of the sanctions of Article 16, any Member of the League would have a veto on the passage of armed forces of another Member, whether naval, military or air, through or across its territory; for the Council, in making the request, must act unanimously; and if not already a Member of the Council, the State whose territory was in question would be a member of the Council *ad hoc* under the provision which is now the fifth paragraph of Article 4.

The amendment was called the Swiss Amendment because it was put forward on behalf of the Swiss Delegation at Paris with the idea of permitting Switzerland to join the League, with part, at least, of her policy of neutrality preserved. The British always supported the proposal.[2]

The Swiss were heartily in favor of the policy of a League of Nations. This was a very natural point of view for a small country to take; but perhaps among all small countries, it was most peculiarly appropriate for Switzerland in view of her past history. Furthermore, the Swiss were very desirous of having the Seat of the League established at Geneva; but in connection

[1] See the discussion of this Article at the meeting with the Neutral Powers on March 21 (Document 25).

[2] See Document 29, the British suggestions before the Drafting Committee.

with the League of Nations there was a vital policy of Switzerland involved, vital at least from the point of view of the Swiss people. For a century past, Switzerland had not only been a neutral State, but notably *the* neutral State of the world. A policy of neutrality seemed as natural for Switzerland since 1815 as the ideas of liberty and of democracy had seemed to be inherent in the soil of the country and in the souls of her people for some centuries before that.

I have already quoted the Swiss Memorandum regarding the Covenant of February 14 in which allusion to the Swiss policy had been made;[1] but earlier than this, under date of (probably) February 8, the Swiss had submitted the following paper entitled " Memorandum Concerning the Neutrality of Switzerland," which is an authoritative statement of the Swiss position:

> In a moment when the representatives of the Powers that are assembled in Paris are about to lay the foundation of a new international organization, Switzerland wishes to put them in mind of the origin and nature of her neutrality. She feels herself bound, moreover, to lay stress on the necessity of this secular institution and to state the part which may be assigned to it in future.
>
> True to their traditional policy, the Swiss Government have issued, on the 4th of August, 1914, the following declaration of neutrality to the Powers: "By special order of the Federal Assembly the Federal Council formally declares that during the war which is about to begin, the Swiss Confederation will maintain and defend with all the means it has at its disposal, the neutrality and the inviolability of the Swiss territory, as they have been recognized by the Treaties of 1815. Switzerland herself will observe the strictest neutrality towards the belligerent States."
>
> The Powers have explicitly recognized the Swiss neutrality and the integrity of the Swiss territory has been respected.
>
> In protecting her frontiers as long as the war lasted, Switzerland has conscientiously kept her word which she had freely given in 1815 and which forbids her, except in cases of legitimate defence, to take part in any war.
>
> The Confederation is entitled to lay stress on the not occasional but permanent character of the Swiss neutrality. Its policy of peace grows from a principle which has been set up as a maxim of State since the beginning of the XVIth century. The Swiss who for causes which were not their own have spilt their blood on all the battlefields of Europe, nevertheless adopted and maintained the neutrality as the guiding principle of their own policy. They

[1] See p. 303 *sqq.*

have laid down this principle in the constitution of their federal State. The declaration of the Federal Council of August 4, 1914, is nothing but a repetition of a great number of identical decisions which were reached by the federal Diets in the course of four centuries. The Swiss have therefore been the first of all peoples to proclaim their standard of a loftier policy which is destined to be triumphant in the system of the League of Nations. This systematical policy of peace is unequalled in history.

The neutrality of Switzerland does not merely consist in the observance of the rules of the law of nations and of international conventions. It is above all the expression of the deep conviction and the firm will which the Swiss people have never ceased to manifest in invariable sincerity and loyalty. The Swiss could never be brought to understand the necessity of abandoning the maxim of their politics, the value of which has been brought home to them by an experience of centuries.

The neutrality of Switzerland is entirely different from all other neutralities recorded by history. It is one of the most essential conditions of the interior peace and therefore of the independence of the country, that embraces so many elements which differ in language and in civilization. Switzerland is deeply attached to this variety, which in spite of the smallness of her territory is the source of a particularly intense national existence.

The maintenance of this institution which has passed through many centuries is as indispensable to Europe as it is to Switzerland herself. The powers that were assembled in Paris in 1815 spoke the truth in declaring that the neutrality and inviolability of Switzerland and her independence from any foreign influence *"are in the real interest of the policies of whole Europe."* This declaration has retained its full value up to our days.

Switzerland must remain in future, as she has been in the past, the trusty guardian of the passes of the Alps.

In this war, like already in 1871, neutral Switzerland could render humanity far greater services than she could have done in taking part in the struggle. In virtue of her perpetual neutrality the International Red Cross which came to light on her territory could deploy its beneficent activity and recently even penetrate into regions that are blocked by anarchy. Equally by reason of her neutrality Switzerland had in a moment when the relations between the belligerents had entirely ceased, the high privilege of fulfilling in the domain of charity a task which has preserved the world from a further aggravation of its sufferings. An island of peace in the midst of the storm, Switzerland could provide during four years for the hospitalization and repatriation of the victims of the war as well as for the support of prisoners and, in transmitting numberless correspondences, could knit again the precious

ties which had been brutally torn in the universal crisis. Finally, the Swiss Confederation was enabled by its neutrality to contribute to fill the gap which had been left through the rupture of the diplomatic relations between the belligerents.

Switzerland wishes a League of Nations to be created, which will place international relations exclusively on the bases of right and justice; she hopes to find in it the place that is in concordance with her traditions as a federal and peaceful democracy.

Possibly the great idea of a League of Nations can only be realized by degrees. It can be conceived that within the system of the League war will for the present remain admissible in those cases in which all prescribed means of conciliation have led to no result. It might also be that the confederate League does not embrace from the beginning all the States which surround Switzerland. In either case the maintenance of neutrality would be a necessity, as those circumstances would subsist from which the perpetual neutrality has sprung up.

Even if, as Switzerland desires, the League of Nations succeeds in legally and practically prohibiting war in the present sense of word, Switzerland must adhere to her traditional neutrality on account of the military executions which the League might be obliged to decree. In maintaining her neutrality, Switzerland could then render greater services to the League than in taking active part in military measures even if these should be directed against some of her neighbours.

On one hand, she will continue to defend by her own forces the central fortress of Europe and to offer a secure shelter to the International Red Cross and the other institutions which may be affiliated to it.

On the other hand, the League of Nations will have the greatest interest in admitting into the community of the League one or several States, in the inviolable territory of which the international institutions could find a residence and therefore an atmosphere of impartiality.

By reason of her neutrality Switzerland could keep up throughout the centuries the tie that unites peoples of different races, different languages and different religions. In scrupulously following this principle, the Swiss cantons were able to develop between each other a spirit which is based on mutual respect of their national characteristics. Switzerland, the oldest of existing republics, would gladly offer the League the fruit of the experiences she has acquired in the course of several centuries in a slow and difficult development of her federal system. Only if Switzerland will remain true to her traditions and principles, she will occupy in the League, for the benefit of all confederate States, the place which is assigned to her by history.

From the Swiss point of view, the idea of a League of Nations had to be reconciled with the policy of Swiss neutrality. I think it is fair to say that there is quite a parallel between the way the average Swiss looked at their policy of neutrality and the way the average American who favored the League thought about the Monroe Doctrine. Each was a national policy which had very deep roots in national feelings; each had served for a century successfully; if the idea of the League could be worked out consistently with the national policy, well and good; but the policy came first, partly because of sentiment, partly because of the general idea, which is a very natural and very proper one, that a new principle which has not yet been tried out, should not be adopted at the expense of an old one which has been tried out successfully; hence the Swiss Amendment.

While I recognized the force of the Swiss position, I was always opposed to the Swiss Amendment.

Looking first at the general question of the passage of troops, quite apart from any point as to an exception in favor of Switzerland, the argument in favor of the agreed right of passage and consequently against the Swiss Amendment had much to support it in theory. Our present-day idea of neutrality, an "attitude of impartiality", as Oppenheim calls it, is of very recent date. Well on in the eighteenth century we find the view taken by Vattel that a neutral might permit the passage of troops of a belligerent through the neutral State.[1] Of course we now think that it is the duty of a neutral to remain impartial, and more or less elaborate attempts have been made to state in detail by international agreement the rights and duties of neutrals.[2]

Now, certainly in theory this neutrality of modern international law is ended by the Covenant so far as the Members of the League *inter se* are concerned, in the event of a war commenced by one of these Members contrary to the Covenant itself.[3] I do

[1] See *The Law of Nations*, Book III, Chapter VII, where this subject is discussed. Cf. Jefferson's opinion in 1790 (*Works*, Federal Edition, (1905), vol. VI, p. 141) as to "what the answer of the President should be in case Lord Dorchester should apply for permission to march troops through the territory of the United States, from Detroit to the Mississippi"; in his opinion he said:

> "It is well enough agreed, in the laws of nations, that for a neutral power to give or refuse permission to the troops of either belligerent party to pass through their territory, is no breach of neutrality, provided the same refusal or permission be extended to the other party."

[2] See Conventions V and XIII of the Hague of 1907 and also the Declaration of London; cf. Project 26 of the American Institute of International Law, reviewed by Quincy Wright in *A.J.I.L.* Vol. 21, p. 127.

[3] See Article 10 as well as Article 16 in this regard.

not think that any one could deny the theoretical correctness of this observation, whatever may be the special situation of any country in connection with the carrying out of Article 16, either generally or in a given case.

One of the fundamental ideas of the Covenant is that if one of the Members of the League resorts to war contrary to its provisions, the remaining Members of the League are not to be impartial but partial; they agree to an economic blockade of the aggressor; and since the attitude of impartiality is swept away and partiality becomes a duty, the theoretical argument in favor of the existence of the right of passage in favor of those States that unite against the aggressor is unanswerable.

However, in view of the subsequent history of Article 16, and the difficulties that have been found to exist in any uniform and rigid application of its provisions, it may now be regarded as very doubtful whether the Swiss Amendment was of prime importance. The provisions of Article 16 lay down a fixed rule for the application of its sanctions in any given case by every Member of the League alike. Now there can be no doubt whatever that if and as any specific case shall arise, the execution of these provisions, regardless of their language, will have to vary greatly as among the Powers concerned. This was recognized by the unanimous resolution of the Second Assembly.[1] The discussions of the question of the passage of troops since 1920 do not lend much support to the view that the form of the clause giving permission for such passage is of essential significance.[2] Indeed, when Germany came to make her application for membership in the League

[1] The following is a portion of the resolution:

> The resolutions and proposals for amendments to Article 16 which have been adopted by the Assembly shall, so long as the amendments have not been put in force in the form required by the Covenant, constitute rules for guidance which the Assembly recommends, as a provisional measure, to the Council and to the members of the League in connection with the application of Article 16.

Among the proposals mentioned, was to insert the following as the fourth paragraph of Article 16:

> Nevertheless, the Council may, in the case of particular members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such members.

[2] During the Polish-Lithuanian dispute in 1921 when an international force was dispatched to Vilna for the purpose of supervising a plebiscite, Switzerland refused passage across her territory to this force. See Minutes of the 12th Session of the Council, pp. 21-22; 42; 96; also Records of the 2nd Assembly, 1921 pp. 98-99.

the special situation of that country, created by the Treaty of Versailles in regard to armaments, caused her to raise questions regarding Article 16 somewhat analogous to those suggested by Switzerland, though having a very different origin and purpose.

Now, considering the matter from the point of view of an exception in favor of Switzerland, the argument, in the light of the present, is, I think, all one way or at least overwhelmingly in favor of the exception. While my view in 1919 was the other way, I have no hesitation in saying now that I think that the contrary view of Cecil was the right one. I was influenced by the fear that any exception would mean more exceptions; in the clause which I had drafted for the accession of neutral States I had been careful to put in the words "without reservation." [1] I also felt convinced, as I have previously mentioned, that any additions to the Covenant at the time tended to require explanation and arouse opposition.

I discussed the matter of the Swiss Amendment frequently and at length with M. Rappard of the Swiss Delegation. On April 1 he mentioned to me the desire of the Swiss to be able to object to free passage of troops over their territory in the event of a war, there being under Article 16 of the Covenant a specific consent in advance to such passage. The following day when I went to see Cecil, Rappard was there. I spoke with very great frankness about Swiss neutrality and suggested, I thought somewhat to Cecil's surprise and regret, that the obligation of the Powers to guarantee Swiss neutrality was inconsistent with the Covenant and accordingly would be an obligation from which (under Article 20) they would have to attempt to withdraw. Rappard spoke of the political consequences in Switzerland of the abandonment of neutrality and I mentioned in reply the political consequences in the United States of having to say that we might send troops to Europe in certain contingencies and that regardless of the military necessity of defeating the enemy, any small Power in the League of Nations in Europe could refuse to permit troops to cross its territory.

It was on that afternoon (April 2) at the meeting of the Drafting Committee, that I opposed the inclusion of the Swiss Amendment in the text; and after this meeting, I specifically mentioned to Colonel House my opposition to the Swiss amendment, which he approved. So far as the Drafting Committee was concerned, the amendment had not been accepted.

[1] See p. 319. Cf. Covenant, Article 1.

Rappard, however, naturally took the matter up with House. I told Rappard on April 10 that I was convinced that the Swiss Amendment was inadvisable and definitely stated to him, in response to his inquiry as to whether that was the American position, that it was, until it was reversed by somebody higher up. Later on that day, House told me that he had spoken to Cecil about the Swiss Amendment and had shown him a memorandum of mine against it and that Cecil thought the amendment would do no great harm. I asked Colonel House definitely if we were to recede from our position on the Swiss Amendment and he said yes. I confirmed this to Cecil when I saw him later that afternoon, telling him that I remained convinced that I was right, but that I understood that the decision was the other way.

However, when the question came up at the final Meeting [1] of the Commission on the League of Nations on April 11, the amendment was proposed and rejected. Wilson was against it and was supported by the French.

While the Swiss Amendment, as an amendment, had failed of adoption in the Covenant text, further efforts were made to obtain some sort of a declaration which might take its place. Cecil wrote a note to House suggesting that President Wilson in the speech that he was to make at the Plenary Session of the Peace Conference on April 28 might refer to Swiss neutrality as being within Article 21 of the Covenant, the Monroe Doctrine Article. Cecil discussed the matter with me on April 24. He said there was no question of any amendment to the Covenant and that the Swiss said that they could preserve their neutrality although breaking relations with a country by virtue of the Covenant, but that the passage of troops was another matter for them and they thought that the President could make a statement that they came under Article 21, their neutrality being a regional understanding. I told him that it seemed to me extraordinary to suppose that it would not be unneutral for a country to break relations because of a previous treaty agreement to do so.

When I saw Colonel House the next day I told him that I did not think well of the President making a statement about the Swiss situation and I wrote this memorandum on the matter for the President, which House approved:

> It has been suggested that the President should make some allusion at the Plenary Session of the Conference on Monday next

[1] See the minutes of the Fifteenth Meeting in Document 19.

to the neutrality of Switzerland as being continued by the provisions of Article XXI of the Covenant ("regional understandings like the Monroe Doctrine") so as to relieve Switzerland of some or all of the obligations of Article XVI.

I submit for the following reasons no such allusion should be made:

(1) There is a strong sentiment against the selection of Geneva as the Seat of the League, which any such statement would accentuate.

(2) The thought that the obligations of a Member of the League may be lessened by Article XXI is one which the President distinctly repudiated and which it would be very unfortunate now to revive.

(3) Whether the obligations of Switzerland as a Member of the League are to be regarded as in any way less than those of other Members because of her history of neutrality, is open to grave doubt.

(4) The sentiment of the Commission was decidedly against making any express exception in favor of Switzerland. I am inclined to think that no such exception exists, in which case no statement should be made. But even if the exception exists, there is no reason why the onus of such a statement (which will no doubt be disputed) should be borne by the United States.

The President took the same view for in his speech on April 28 he made no reference to Swiss neutrality.

After the Plenary Session of the Conference had adopted the Covenant and named Sir Eric Drummond as Secretary General, the idea was suggested that the Swiss Government might address an inquiry to the Secretary General regarding its rights under Article 21. The matter was mentioned at a luncheon given by Colonel House on April 30, Cecil being among the guests. Of course it was impossible that the Secretary General could with any authority answer any such question; and there was at that time no League, and consequently no Council, in existence and could not be until the Treaty of Versailles which had not yet even been signed, came into force.

The subsequent history of the question and the great importance which it had in relation to the Swiss Referendum on entrance into the League have been authoritatively described elsewhere.[1]

[1] See "L'entrée de la Suisse dans la Société des Nations," by W. E. Rappard, in *Les Origines et L'Oeuvre de la Société des Nations* (Copenhagen, 1923-4).

In view of the great difficulties both of kind and of degree in the application and execution of the terms of Article 16, no one can now object, I think, to the fact that the Swiss finally obtained a recognition, in advance, of their special and peculiar situation. Indirectly and in a very curious way, this recognition is to some extent granted by Article 435 of the Treaty of Versailles by which, although Switzerland is not a Signatory, the Parties "recognize the guarantees stipulated by the Treaties of 1815 . . . . in favour of Switzerland, the said guarantees constituting international obligations for the maintenance of peace.[1]. . ." Later on and more directly, the Swiss again had their situation specifically protected by this resolution of the Council passed February 13, 1920, on the proposal of Mr. Balfour:

> The Council of the League of Nations while affirming that the conception of neutrality of the Members of the League is incompatible with the principle that all Members will be obliged to co-operate in enforcing respect for their engagements, recognizes that Switzerland is in a unique situation, based on a tradition of several centuries, which has been explicitly incorporated in the Law of Nations; and that the Members of the League of Nations, signatories of the Treaty of Versailles, have rightly recognized by Article 435 that the guarantees stipulated in favour of Switzerland by the Treaties of 1815 and especially by the Act of November 20th, 1815, constitute international obligations for the maintenance of peace. The Members of the League of Nations are entitled to expect that the Swiss people will not stand aside when the high principles of the League have to be defended. It is in this sense that the Council of the League has taken note of the declaration made by the Swiss Government in its message to the Federal Assembly of 4th August, 1919, and in its Memorandum of 13th January, 1920, which declarations have been confirmed by the Swiss delegates at the meeting of the Council and in accordance with which Switzerland recognizes and proclaims the duties of solidarity which membership of the League of Nations imposes upon her, including therein the duty of co-operating in such economic and financial measures as may be demanded by the League of Nations against a covenant-breaking State, and is prepared to make every sacrifice to defend her own territory under every circumstance, even during operations undertaken by the League of Nations, but will not be obliged to take part in any military action or to allow the passage of foreign troops or the preparation of military operations within her territory.
>
> In accepting these declarations, the Council recognizes that the

[1] Cf. Article 21 of the Covenant.

perpetual neutrality of Switzerland and the guarantee of the inviolability of her territory as incorporated in the Law of Nations, particularly in the Treaties and in the Act of 1815, are justified by the interests of general peace, and as such are compatible with the Covenant.

In view of the special character of the constitution of the Swiss Confederation, the Council of the League of Nations is of opinion that notification of the Swiss declaration of accession to the League, based on the declaration of the Federal Assembly and to be carried out within two months from 10th January, 1920 (the date of the coming into force of the Covenant of the League of Nations), can be accepted by the other members of the League as the declaration required by Article 1 for admission as an original Member, provided that confirmation of this declaration by the Swiss people and Cantons be effected in the shortest possible time.

One further comment may be made regarding the effect of the Covenant on the "conception of neutrality", as the Council resolution called it. The universal League envisaged in 1919 has not yet arrived and unless and until it does, the new system of the Covenant cannot be completely or perfectly in force. Indeed, with important countries outside of the League, any attempted ending or modification of neutrality may present difficulties of the gravest nature, as the discussions regarding the Protocol of Geneva showed.

Under the modern theory of neutrality the neutral State has rights as a neutral, as well as duties. The application of the sanctions of Article 16, *as against a State agreeing to them in advance,* is of course, subject to no legal objection by that State; but a State *outside* of the agreement may insist that, as to it, such application is a denial of its privileges. The theory that war, in some cases at least, is a crime against organized humanity which should be prevented by the agreed sanction of an economic blockade etc., runs up against the fact that an outside neutral may and doubtless would insist on the privilege of "business as usual", with the resultant financial profit from that very war.

The development of the theory of sanctions in treaties and in international law and practice is a matter yet largely for the future, in which progress will be made step by step; although it is doubtless true that the first and most important step was taken by the Covenant.

CHAPTER XXXII

FOURTEENTH MEETING OF THE COMMISSION

THE Commission on the League of Nations at its final Meetings (the Fourteenth and Fifteenth) on April 10 and 11, considered the English text of the Covenant reported by the Drafting Committee (Document 30).

The meeting of April 10 began at eight o'clock in the evening and continued until after midnight. At the opening of the session there were heard representatives of the International Council of Women who spoke in favor of various points raised in their memorial. The minutes [1] give an outline of these and copies of the Memorial in French and English were distributed to the members of the Commission. It seems to me unnecessary to reproduce it.

One point particularly stressed by the ladies was the question of suffrage; so I took occasion to write a note to Wilson mentioning that equal suffrage was a principle of every plebiscite of the Peace Treaties. The President referred to this in his remarks.

After this formality was over, the Commission took up the text of the Drafting Committee;[2] as my notes show (though there is no mention of the Preamble in the minutes), consideration of the Preamble was postponed at the request of Baron Makino (who was to present the Japanese amendment later); then Articles 1 to 10 inclusive of the Committee text were passed without any change in language whatever. One change was made, but not in language, merely in the order of paragraphing. In Article 5, the position of the first two paragraphs, as they were reported by the Drafting Committee, was reversed.

The minutes of this Fourteenth Meeting under the heading Article 2, contain a page of discussion regarding the French text, its differences from the English, and the appointment of Larnaude and myself as a Committee on the French text. I shall recur to this discussion in Chapter XXXV. I shall also consider

[1] See the English minutes, Document 19. The French minutes of these last two meetings of the Commission I do not have.

[2] Document 30. The minutes do not print this text, although saying that it was presented by Cecil.

there the French text which was before these two final meetings of the Commission and which Reis at the Fifteenth Meeting (April 11) called "the French translation" (Document 36). At this point I refer to the matter because I do not think that this debate reported in the minutes took place at the meeting of April 10 at all. The minutes, in my view, are erroneous as to this, for I believe that this discussion occurred at the *following* meeting on April 11, the Fifteenth Meeting, the last meeting of the Commission.

My reasons for this view are, first of all, that neither my notes nor my Diary for April 10 say a word about this debate. Certainly they would have mentioned a matter which interested me so directly; furthermore, my Diary for the next day, April 11, *does* mention that Larnaude and I were, *on that* evening appointed a Committee to prepare a French text; and my Diary for April 11 also mentions a conversation that I had with Hurst during the afternoon of that day regarding a French text of the Covenant;[1] and that conversation could not have taken place as I record it if the appointment of the Committee had already been made. In other words, the discussion of the French text recorded in the minutes of the Fourteenth Meeting took place at the Fifteenth Meeting of the Commission on the evening of April 11, after this talk of mine with Hurst.

The internal evidence of the minutes is equally strong. The discussion is reported under Article 2. No reason whatever existed for such a discussion coming up under that brief Article.[2] The natural time for the matter to be raised was either at the beginning of these two April meetings or at their end. Clearly, it was at the close of the meeting on the following evening that all this took place and the heading, Article 2, is a slip for Article 26. I point out that during this debate, as it is recorded in the minutes of April 10 (the Fourteenth Meeting) Bourgeois proposed an Article 26; now if we look at the minutes of April 11 (the Fifteenth Meeting) very near the close of the meeting, we find the following paragraph:

> After an exchange of views between Mr. Bourgeois, Lord Robert Cecil and Mr. Larnaude, it was decided that an agreement between the English and French texts should be reached by a small Drafting Committee composed of both French and English speaking members.

[1] See p. 514 *sq.*
[2] It contains only 25 words in the English text.

This is the point at which the discussion of the French text took place and what appears under Article 2 of the minutes of April 10 was a subsequent write-up of this "exchange of views." Having a wrong heading, Article 2 instead of 26, it got out of place during the printing of the minutes; this printing was obviously done from the mimeographed sheets as copy, as may be seen from the fact that under Article 7 (minutes of the Fourteenth Meeting) the remarks of M. Vesnitch and also those of M. Veniselos are reported as "No change in roneoed text." Surely this was a note on the copy or the proof which the printer took into the text instead of the remarks themselves.

The only two points that were considered at any length during the Fourteenth Meeting of the Commission were the Seat of the League and the Monroe Doctrine amendment.

When Article 7 was reached, the Report on the Seat of the League was made by Orlando, as chairman of the Sub-Committee,[1] in favor of Geneva. One paper which was on the table in connection with the Report of Orlando was a Note to M. Rappard on behalf of the Sub-Committee, under date of March 29, as follows:

> The Commission on the League of Nations has appointed a sub-Committee to make recommendations in regard to the Seat of the League. Among the places they are considering for this purpose is Geneva. Before the sub-Committee makes any recommendations to the Commission, it desires to ascertain whether, in case Geneva is recommended as the Seat, the Swiss Government would be prepared to place at the disposal of the League, in a suitable situation on the Lake of Geneva near the town of Geneva, to be decided by the Administration of the League, sufficient ground for the premises of the League and residences for its members and officials. It must be borne in mind that with the growing importance and influence of the League in the future international relations of the world, the Seat of the League will require a corresponding expansion, and that the requirements of the League in this respect may have to be enlarged from time to time. In fact in course of time a new international world capitol [2] may arise, and the space requirements for the Seat may therefore in time become very considerable. It is not the intention to put the Swiss Government to any expense, but its authority and good-will are required to place at the disposal of the League such land as may be required from time to time for the above purposes.

[1] The other members were Smuts, Makino and House.
[2] So typed in my copy.

The Swiss Government would also have to guarantee inviolability of territorial rights in respect of it in terms of the Covenant.

The discussion on the Seat of the League, as the minutes show, was participated in by various members of the Commission, but it was not very real. There was no doubt by this time that Geneva was to be selected. Naturally enough, the claim of Brussels was still insisted on by Hymans and a Belgian Note on the matter was submitted which is set out in the minutes,[1] although there called a "speech". However, no other delegates, except the French, directly supported Brussels. The Committee report was finally adopted by a vote of twelve members, the negative not being taken. Thus, the first paragraph of Article 7 was completed: "The Seat of the League is established at Geneva."

The real discussion of the evening came when the Monroe Doctrine amendment was proposed by President Wilson. The English text of this has been quoted above,[2] and also appears below at the opening of Mr. Wilson's remarks. A French translation, which had been made in my office earlier in the day, and which was a part of the amendment paper before the Commission, read thus:

> Nulle disposition du present Pacte n'est considerée comme affectant les engagements internationaux tels que les traités d'arbitrage ou les accords régionaux tels que la Doctrine de Monroe, qui assurent le maintien de la paix.

The discussion of the Monroe Doctrine amendment is quite fully reported in the minutes, but the basis of the minutes was the notes of Mr. Shepardson and as these are somewhat more complete and are the original document, I print them here:

> President Wilson: Article x. I have an amendment to propose to this Article which reads as follows:
>
> > "Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace."
>
> M. Koo: I do not wish to be understood as opposing the introduction of this amendment. I approve of it in principle, but

[1] The English translation in the minutes differs somewhat from the version originally circulated.

[2] At p. 425 *sq.*

I should like to suggest that the Monroe Doctrine should be named specifically and alone in this Article and not made one of the class of "regional understandings."

M. Larnaude: Before accepting this amendment, I should like very much to have a clear definition of what the Monroe Doctrine is. Every time the liberty of Europe has been threatened, the United States has either acted upon the right or reserved the right to come to Europe in defense of her liberty. Does the United States amendment intend to consecrate or to change this policy?

M. Reis: My difficulty of approving of this amendment is that I find no text of the Doctrine which is referred to. I, therefore, cannot commit my home government to an approval of something which is vague and unspecified. We all know of the letter from Jefferson to Monroe; we know that the Monroe Doctrine was framed to oppose the idea of the Holy Alliance going to America and introducing its ideas there; we know of the attitude of President Grant and we know of the various interpretations which have been put upon the Doctrine in Pan-American meetings. I know, however, of no definite existing text to approve. All of us are glad that America decided to come to Europe and participate in this war, nevertheless that action of hers would seem to be rather contradictory to the Monroe Doctrine.

Lord Robert Cecil: I wish to say something about this amendment, not to oppose its adoption but to explain its meaning, and I would like to have my remarks recorded in the procès-verbal. I understand this to mean, oddly enough, exactly what it says:

> "Nothing in this Covenant shall be deemed to affect the validity of" various international engagements.

It gives to these engagements no sanction or validity which they have not hitherto enjoyed. It accepts them as they are. And in particular it accepts the Monroe Doctrine as it is, a doctrine which has never been expressed in terms. Indeed, it is well to leave it undefined and as an example, because if we attempted to state it we might be extending or limiting its application. Yet in spite of the fact that it has never been definitely formulated, it would not be common sense to deny that such a doctrine has existed and has been acted upon.

What I would understand this amendment to say is what I believe to be implicit in the Covenant without saying. It says what I believe to be true, that nothing in the Covenant interferes with international understandings like the Monroe Doctrine. It makes no understanding or alleged understanding either more valid or less valid. It accepts them as they are.

M. Reis: Is there anything in the Covenant which conflicts with the Monroe Doctrine? Would it, for example, permit the

United States to go to Europe or Europe to go to the United States?

President Wilson: May I answer Mr. Reis' question in this way. The Covenant provides that the members of the League will mutually defend each other in respect of their political and their territorial integrity. This Covenant is therefore the highest tribute to the Monroe Doctrine, for it is an international extension of that principle by which the United States said that it would protect the political independence and territorial integrity of other American States. By it the United States served notice on the rest of the world that it would defend any South American country against political or territorial attack.

When you try to understand what the Monroe Doctrine means, you should not study theoretical interpretations which have been placed upon it, but actions which have been taken thereunder. I am certain that no actions under this doctrine will be found to be inconsistent with the general principles of the Covenant.

When I was in America my colleagues asked whether the acceptance of the Covenant by America would destroy the principles of the Monroe Doctrine. I replied that it was nothing but a confirmation and extension of the Monroe Doctrine, and explained to them why this was so. They then asked me if this were so, whether there would be any objection to making a specific statement to that effect in the text. It is by way of concession to this reasonable request that I am asking the Commission to state definitely something which is already implicitly taken care of.

M. Koo observed that as the amendment stood, the word "understandings" was in the plural and appeared to be too broad. It would cover all kinds of understandings, good, bad and indifferent. If there were no serious objections he would like to have the words "regional understandings like" struck out and the word "of" substituted therefor.

M. Larnaude: It seems unnecessary to make a specific mention of the Monroe Doctrine. And it seems very much out of harmony with the rest of the document, since it is the only reference in the document to a particular country.

Article 20 provides that all the States which enter the League are bound to make their international engagements conform to the spirit of the League. If they are not inconsistent, they can stand. If, therefore, there is nothing in the Monroe Doctrine inconsistent with the Covenant, it will not be affected.

M. Reis: I should like to add at the end of President Wilson's amendment the words "so far as the Monroe Doctrine is not inconsistent with the League."

M. Larnaude: It would certainly be very unfortunate if the Monroe Doctrine should be interpreted to mean that the United

States could not participate in any settlement of European affairs decided upon by the League.

M. Orlando: M. Larnaude will remember that the United States came to participate in this war.

M. Larnaude: And we will never forget it.

M. Orlando: If they came to Europe to participate in this war under the principles of the Monroe Doctrine, and without any League sanction, then more so would they come to Europe in similar circumstances if they were members of the League.

M. Reis: I should like permission to read the two capital sentences of President Monroe on this subject.

President Wilson: In answer to several objections which have been made, I would like to point out that if, for any reason, the Monroe Doctrine should take a line of development inconsistent with the principles of the League, the League would be in a position to correct this tendency. If there is any feeling that the word "regional" is too large I am ready to strike that word out, because I think myself that the word "region" is perhaps hardly applicable to so large a territory as the Western Hemisphere.

Lord Robert Cecil: I agree, Mr. President.

M. Bourgeois: If this amendment is written into the Covenant under Article 10, will it be in conflict with Article 20?

President Wilson: Not at all.

M. Bourgeois: Then why put it into the Covenant?

Lord Robert Cecil: Perhaps M. Bourgeois will permit me to explain again what I thought was quite clear by this time. In Article 5 we inserted a clause saying that the decisions of the Assembly and of the Council must be unanimous unless otherwise provided for.

All of us felt that there could be no question about this principle but there had been so much misunderstanding about it, that it seemed best to make a definite reference to it. Similarly this amendment proposes to make another implicit principle perfectly clear, that the validity of the Monroe Doctrine is not affected by anything in this Covenant.

M. Koo: I am in complete accord with President Wilson and Lord Robert Cecil in wishing to have the Monroe Doctrine specifically mentioned here, because I believe that this doctrine has been tested for a century and has been found to have contributed greatly to the development of the ideas of liberty and peace throughout the world. But as to the retention of the words "regional understandings" or even "understandings," I should like very much to see them omitted. Unless Lord Robert Cecil has some other understanding of a similar nature in mind, it would appear better to confine the amendment to the specific mention of the Monroe Doctrine.

As it is now worded, while it does not add anything to the validity of all existing understandings, it does appear to uphold all those which might otherwise become obsolete or fall into desuetude. Besides, the present wording appears also to include any understandings which may be made in the future of whatever nature. This would hardly be advisable, as one could not be sure of the understandings which might be made in five or ten years from now. For these reasons, I should like to see these words omitted but in case Lord Robert Cecil has some reason for still desiring to retain the word "understandings" then I would like to add after it the words "hitherto commonly accepted."

Lord Robert Cecil: So far as the British Empire is concerned there *are* other understandings. For example there is the ancient understanding concerning Arabia, and the new understanding with regard to the Kingdom of the Hedjaz, whereby Great Britain is to direct their foreign relations.

M. Koo: Both of these will fall into the category of "hitherto commonly accepted understandings."

Lord Robert Cecil: The wording suggested by M. Koo might raise difficulties as to what was or was not commonly accepted. In this way it might question or limit the validity of existing understandings. As the Article now reads it does not enlarge or detract from their validity. It gives another (?) understanding and (?) validity which it has not already got.

M. Koo: I agree fully with Lord Robert Cecil so far as a reference to the Monroe Doctrine is concerned. I should be glad to see it mentioned; but I should prefer to have it mentioned alone and to avoid use of such a broad word as "understandings."

Lord Robert Cecil: It would be a very dangerous and unfortunate thing to state it specifically, inasmuch as the French Delegation has already entered its objection to this procedure. And I feel myself that the Monroe Doctrine should be used merely as an illustration and as an example of similar understandings.

President Wilson: Any understanding which infringes upon the territorial integrity or political independence of any States would be inconsistent with the Covenant. Any State which signs the Covenant obligates itself immediately to abrogate such inconsistent understandings.

The inclusion of this reference to the Monroe Doctrine is in effect nothing but a recognition of the fact that it is not inconsistent with the terms of the Covenant.

M. Larnaude: If it is not inconsistent with the terms of the Covenant it seems to me very unnecessary to refer to it.

President Wilson: I again assure M. Larnaude that if the United States signs this document it is solemnly obliged to render

aid in European troubles when the territorial integrity of European States is threatened by external aggression.

M. Orlando: I should like to remind M. Larnaude that if the United States came to Europe to participate in this war and that such action was consistent with the Monroe Doctrine, it will be quite ready to come when it has accepted additional obligations of membership in the League.

President Wilson: Will M. Larnaude please explain whether he really doubts whether the United States will live up to its obligations if it becomes a signatory to the Covenant of the League?

M. Larnaude: My only question is with regard to the significance of the Monroe Doctrine. I think that it should be definitely expressed in words.

President Wilson: I think that it is completely explained.

M. Bourgeois: If this amendment is introduced there will be two separate groups of States under the Covenant, the United States on the one hand and the European States on the other.

President Wilson: We certainly hope that other States of the American Continent, like Brazil, for example will come in at once. More than that we anticipate that practically all the States in the world will become members. In such a world League it seems out of place to talk about two groups.

Lord Robert Cecil: I think, Mr. President, that I see what is troubling the French Delegation. This amendment has been introduced as an addition to Article 10, the Article which they believe to be of the greatest importance to France. They are probably troubled because they fear that your amendment may limit the protection which is afforded by Article 10. If you were willing, for example, that it should be placed under Article 20, I think that their misapprehensions would be taken care of.

President Wilson: I am quite willing to have it go in under Article 20.

M. Larnaude: Yes, put it at the end of Article 20 and add an explanation by way of a footnote which should be part of the Covenant which states exactly what the Monroe Doctrine is.

(General objections from the Commission to M. Larnaude's suggestion.)

M. Vesnitch: As far as an explanation of the Monroe Doctrine is concerned it seems to me that it is clearly divided into two parts: The first part looks toward the protection of American States; the second part looks toward the abstention of America from European affairs. I do not think it can be questioned that the first part of the doctrine is its essence and that the second part of the doctrine is anything but a corollary of the first. The best evidence of this interpretation is in the fact that the United States

did participate in this great European settlement in spite of the Monroe Doctrine.

President Wilson: I think it might be helpful for the discussion if I should give something of the history which lies behind the Monroe Doctrine. At a time when the world was in the grip of absolutism, one of the two or three then free States of Europe suggested to the United States that they should take some political step to guard against the spread of absolutism to the American Continent. Acting upon this suggestion, the principles of the Monroe Doctrine were laid down, and from that day to this proved a successful barrier against the insinuation of absolutism into North and South America.

The question now arises, whether you are going to penalize the United States for her adoption of this policy, when you are engaged upon the drafting of a document which is the logical, historical extension of the Monroe Doctrine to the whole world. A hundred years ago we said, "the absolutism of Europe shall not come to the American Continent," and we preserved that principle through all these years. Then there came a time when the liberty of Europe was threatened by the spectre of a new absolutism. America came and came gladly to help in the preservation of European liberty. America was proud to come in such a cause.

Are you now going to debate this issue, are we going to scruple on words when the United States is ready to sign a Covenant which makes her forever a part of the movement for liberty? This is not a little thing, this is a great thing. Gentlemen, you cannot afford to deprive America of the privilege of joining with you in this movement.

M. Koo: I should be glad if after the word "understandings" the following phrase could be added: "which are not inconsistent with the terms hereof like the Monroe Doctrine."

Lord Robert Cecil: This addition seems to be wholly unnecessary and rather redundant, inasmuch as the meaning of the words suggested by M. Koo is already implied.

M. Koo: The main purpose of this amendment, as I understand it, is to mention the Monroe Doctrine in the Covenant. If so, the amendment which I propose, though already implied, would make the meaning still clearer, and it would add further prestige to the Monroe Doctrine by thus characterizing it.

President Wilson: I agree with Lord Robert Cecil that this additional phrase is unnecessary, because the effect of Article 20 is to abrogate the understandings which are inconsistent with the terms of the Covenant.

M. Larnaude: I have no doubt that the United States would come again to the aid of Europe if it were threatened by absolutism. The question, however, is, whether the United States

would come as quickly to our help if we should happen to be in a struggle with a country quite as liberal as our own.

Lord Robert Cecil: M. Larnaude is clearly wrong in his interpretation of the way in which the Monroe Doctrine has been applied. I think that if he will consult diplomatic history he will find that the Monroe Doctrine has never in a single instance been in effect as a guide of the policy of American participation in Europe, but always with regard to European interference in American affairs. When American statesmen or international lawyers make any objection to the interference of America in European affairs they never have done it on the basis of the Monroe Doctrine, but always on the basis of Washington's Farewell Address.

President Wilson: Is it conceivable that M. Larnaude wants the United States to say that she will not repudiate her obligations?

M. Reis: If this is the explanation of the Monroe Doctrine then I am ready to approve of this inclusion.

President Wilson: If the article is accepted by the Commission, a logical place can be found for it in the text.

The amendment was then adopted.

Baron Makino reserved the right to raise other questions under Article 10 at the next meeting of the Commission.

As will be seen from this account, the British accepted the Monroe Doctrine amendment and were opposed to any attempt to define the Monroe Doctrine in terms, saying: "If we attempted to state it, we might be extending or limiting its application."

The French objections to the amendment, expressed principally by M. Larnaude, were not very serious; the French Government never had any idea of insisting on them. From the American point of view, they simply caused irritation because they seemed captious and to be presented with the idea of making some kind of a bargain for their withdrawal. Their only result at this meeting was to change the position of the amendment; it had been proposed as Article 10-a, and thus the reference to the Monroe Doctrine seemed to be in connection with Article 10. So Cecil suggested that it should be placed under Article 20, to which President Wilson made no objection, saying that if the Article was accepted a logical place could be found for it in the text.

The argument of Mr. Koo was along different lines and was based on entirely different considerations. He had no objection whatever to the mention of the Monroe Doctrine; but he did not

want that Doctrine mentioned with other unnamed regional understandings, thinking of course of the Chinese situation in general. Koo wanted to omit "regional understandings" or at least "regional," and at one time during the discussion the word "regional" was struck out, both President Wilson and Cecil agreeing; but finally the amendment was adopted without any change in its language.

It is to be noticed that the Japanese said nothing at all during the debate, although when it was over, Baron Makino reserved the right to raise other questions under Article 10 at the next meeting of the Commission.

The account above quoted does not give a realistic idea of the final remarks of President Wilson on his amendment. They constituted perhaps the most impressive speech I ever heard. For quite a while President Wilson had sat silent, listening to the European comments on the Monroe Doctrine, particularly those of the French. He became very much stirred and a sign of his agitation was that his lower lip commenced to quiver. Finally and just about midnight, there was a pause; he got up and made his speech about American policy for the past century in words which literally seemed to cast a spell over those present. It was of course entirely extemporaneous, a sort of verbal magic, and I think that no one present got it down. Later on that night, when I went back to my hotel to get some dinner, I dictated from memory my own summary, a very imperfect one, of what he said:

> A century ago when the nations of Europe were powerless before absolutism, the United States declared that that system should not prevail in the Western Hemisphere. That declaration was the first international charter of human liberty and the real forerunner of the League of Nations. In this last war against absolutism in Europe and which brought about the fall of absolutism throughout the world, the United States took part in accordance with those principles of liberty laid down a century ago. Is she to be denied recognition of the fact that she was first in the field? Is there to be withheld from her the small gift of a few words which only state the fact that her policy for the past century has been devoted to principles of liberty and independence which are to be consecrated in this document as a perpetual charter for all the world?

My notes on this Fourteenth Meeting are little more than a record of the action taken, so I do not reproduce them. There

were, however, various other papers on the Commission table which should be mentioned. One of them was a Note from the Swedish Delegation dated April 7 suggesting the task of formulating the plan for the Permanent Court be entrusted to the Assembly instead of the Council. This is called Annex 2 in the minutes of the Fifteenth Meeting of April 11, but as no Annexes are with those minutes, I print the note here:

La Délégation Suédoise à la Conférence des Neutres serait reconnaissante à la Commission pour la Société des Nations de vouloir bien prendre en considération encore une fois, la question de savoir s'il ne serait pas possible de modifier l'art. XIV du projet de Pacte, en vue de confier a l'Assemblée des Délégués et non au Conseil Exécutif le soin d'arrêter le plan de création de la Cour Internationale Permanente.

Si nous nous permettons de revenir de nouveau a cette question c'est que nous considérons de la plus haute importance aussi bien dans les relations internationales que dans celles qui réglent la jurisprudence nationale, que dans les organes auxquels est confiée la haute mission de rendre la justice, soient exempts de l'ombre même du soupçon de se laisser guider par des considérations d'ordre politique. Dans notre opinion ce résultat serait plus facilement atteint si l'organisation de la Cour Internationale était confiée à l'Assemblée des Délégués.

Veuillez agréer, Monsieur le Président, l'expression de notre profond respect.

Another was a resolution regarding an Organization Committee. This was to come up at the next meeting of the Commission. I had drafted the resolution at the request of House that afternoon and the text of it which he had approved was as follows:

Resolved that the President be requested to invite seven Powers, including two neutrals, to name representatives on a Committee

A. To prepare plans for the organization of the League.
B. To prepare plans for the establishment of the Seat of the League.
C. To prepare plans and the Agenda for the first meeting of the Assembly.

The Committee shall report both to the Council and to the Assembly.

When the resolution was prepared, House suggested that Cecil might present it. It is interesting to recall as an illustration of how the best laid schemes of men miscarry that the idea at this time was that the first meeting of the Assembly would take place in Washington in October, 1919.

There was also a French *projet* regarding objects of historical interest in mandated areas and in Turkey. This proposal was also for the final meeting; it is mentioned in the minutes of that meeting as Annex 3, proposed as an amendment to Article 21 by Bourgeois. While the Annex itself is not with the minutes, the proposal will be found as a footnote in Document 19.

Finally I mention a British memorandum on discrepancies between the English and French texts of the Covenant. I shall refer to this later in connection with my discussion of the French text. [1]

[1] See Chapter XXXV, especially p. 512 *sqq.*

CHAPTER XXXIII

FINAL MEETING OF THE COMMISSION

Mr. Koo remained unconvinced about the language of the Monroe Doctrine Article. On the morning of April 11 House told me to see him and fix up his doubts as to the language if I could. I told House that while I did not think that the language included an "Asiatic Monroe Doctrine," I did think that Japan would contend that such was the effect. In the afternoon Koo came in and talked with me about the Monroe Doctrine amendment. I urged on him that the amendment as it stood was favorable to China and that even the word "regional" should be included, particularly in view of the fact that the amendment contemplated subsequent understandings. I suggested to him that he examine the diplomatic correspondence for some years past between China and the United States so as to see whether this amendment did not really give China a good deal of protection. I also urged upon him the view that the Covenant as a whole, although the matter had not been particularly discussed publicly or otherwise, really affected the Far East in a more serious way than any other portion of the world. Koo argued in favor of adding some such words as these: "Understandings which are not in conflict with the Covenant". I pointed out to him that this would simply be going around a circle, to say that the Covenant did not affect anything that was consistent with the Covenant. He seemed impressed with my argument, but not wholly convinced.

Just before the evening meeting of the Commission, I went over to see House, and reported to him this conversation with Koo. House asked what should be done about the Monroe Doctrine amendment at the meeting that night; should it come up for discussion or be treated as adopted? I said it was adopted and should be treated as adopted, and the French would not claim that it was not; but what they would do would be to offer an amendment in connection with Article 20, which was in fact what happened. House said that Bourgeois had told Oscar Straus that the French did not care anything about their amend-

ment to the Monroe Doctrine clause but simply that it was a good thing to trade with; and House added that his plan was to ride over them regardless of what they did. This is precisely what was done during the meeting as the French were making captious objections; and when I said then to Colonel House, "I think they will withdraw their amendment and not press it", he replied, in strong and colloquial language of a character which he almost never used, to the effect that regardless of the French the Monroe Doctrine clause was going to be put through as it was.

The final meeting of the Commission that evening (April 11), the Fifteenth Meeting, lasted from 8:30 till 12:45.

As the previous meeting had gotten through Article 10, this meeting commenced with the Drafting Committee text of Article 11 and went through the draft, which was accepted almost literally as the Drafting Committee had reported it (Document 30).

The few changes made will be mentioned in the course of my account of the proceedings, which are quite fully reported in the minutes.

When Article 12-a was reached (the Japanese proposal which I have quoted above),[1] Cecil opposed it in accordance with the Drafting Committee report [2] against it; and while Makino argued in favor of it as being in the spirit of the Covenant, he finally withdrew it.

In a note written by Philip Baker during the discussion of this proposed Article there was the following very just observation:

> This Article would make it infinitely more difficult to get agreement to the disarmament limits.

In connection with Article 15 the Commission considered the two proposals brought forward by the Drafting Committee, as suggested by the British. These are printed in parentheses in Document 30 and I need not again quote them here. [3] After some debate, the Commission rejected the first of these proposals, the one directing the Council to consider what steps should be taken if necessary to give effect to a unanimous report; Wilson reminded the Commission that the clause had been previously

[1] See p. 392.
[2] See p. 414 *sq.*
[3] See p. 404 *sq.* The text of the two proposals is also in the minutes of the Fifteenth Meeting.

proposed and eliminated. It was, indeed, a matter to which he had given much thought as I have pointed out.[1]

The other proposal regarding Article 15 (now the seventh paragraph of that Article) reserves liberty of action to the Members of the League in the absence of a unanimous report of the Council regarding a dispute. Although Bourgeois regarded this as a weakening of the Covenant, the Commission accepted it. The minutes do not specifically state this; but my notes as well as the subsequent text show clearly that this was the action taken.

During the discussion of this proposal, Orlando was arguing to the effect that there might be some difficulty regarding the vote of the Council in a given case because of uncertainty as to just who the parties to the dispute were. Orlando's remarks seem to have been somewhat edited in the minutes. The reply of Wilson, as given in the minutes, was based on a note which I wrote to him as a comment on the argument of Orlando; this note is now before me; the words in parenthesis were written on the paper by the President, as he read it:

> The answer (to Sr. Orlando) is this:
> A Power must say
> 1. I *am* a party to the dispute and *my* vote does not count in the recommendation; or
> 2. I am *not* a party to the dispute and therefore my vote does count.
>
> The parties to the dispute are those that claim to be on one side or the other.

The so-called Swiss amendment to Article 16 regarding the passage of troops, which I have discussed at some length above [2] was not accepted as President Wilson did not favor it, a position in which he was supported by the French; the account in the minutes is not entirely clear; my notes say that the amendment to insert the words "on the request of the Council" was "lost"; and there is no doubt that this is correct as those words do not appear in the text of either Document 30 or Document 31.

The French *projet* regarding objects of historical interest [3] was mentioned but not seriously pressed as it was regarded as unnecessary.

While the Article on Mandates (then Article 21, now 22)

[1] See p. 291 *sq.*
[2] See Chapter XXXI.
[3] See p. 452.

was being considered, questions were raised as to the meaning of some of its language, not unnaturally indeed, for the style of this Article is somewhat like that of a political speech or party platform. It differs very greatly from everything else in the Covenant; and the language had hardly been changed since it was originally sponsored or, for aught I know, written by General Smuts;[1] Wilson remarked as to these questions:[2]

> This formulation, you may remember, was adopted in the so-called Council of Ten, and simply taken over into this, so that I don't think that I can interpret it for this group.

Article 25 in the text from the Drafting Committee (the final Article, which became 26) read thus:

> Amendments to this Covenant will take effect when ratified by the States whose Representatives compose the Council and by a majority of the States whose Representatives compose the Assembly.

Under this provision for amendment of the Covenant, a Member of the League not on the Council and not ratifying an amendment, might be put in the position of agreeing, in advance, to the amendment by other States and without its consent, of a treaty to which it was a Party. President Pessôa argued that this would be contrary to the Constitution of Brazil, which accordingly could not accept such a provision. I wrote the following note for President Wilson as a comment on the argument of Pessôa:

> This is a perfectly good constitutional objection according to the Constitutions of most South American States.
>
> Perhaps this would meet it:
>
> "A Member not agreeing to an amendment may withdraw from the League."

Accordingly the Article was amended by adding the following language:[3]

> Provided that no such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

[1] See Chapter IX.
[2] This is from an American stenographic report; cf. the minutes.
[3] Changed later by omitting "provided that" and leaving the rest of the phrase as a sentence. See p. 473.

During the discussion of this Article, Philip Baker wrote me this prophetic note. I call it prophetic because a time limit might well have been put in as has since been formally proposed by way of amendment:

> Should not a state signify its dissent within a fixed time, say 3 months? Otherwise it might suddenly refuse—years after—to be bound by an amendment to the Covenant.

As had been anticipated, the Monroe Doctrine amendment, when Article 20 was reached, came up again for prolonged and heated discussion. The French first proposed the following language:

> Ne sont pas considérés comme incompatibles avec les dispositions du présent Pacte les engagements internationaux destinés à assurer le maintien de la paix tels que les traités d'arbitrage. Il en est de même pour toutes institutions ou doctrines propres à certaines régions, telles que la doctrine de Monroe, en tant qu'il ne peut en résulter pour les Etats signataires aucun obstacle à l'exécution de leurs obligations.

I hastily made a rough translation of this for President Wilson as follows:

> International engagements intended to assure the maintenance of peace, such as treaties of arbitration, shall not be deemed incompatible with the provisions of this Covenant.
>
> To the same effect shall be regarded all arrangements or doctrines applicable to certain regions, such as the Monroe Doctrine, so far as they do not effect any hindrance for the Members of the League in the fulfillment of their obligations.

I thought Mr. Wilson was momentarily disposed to accept this; but after some discussion he agreed that it was objectionable.

Another translation written at the time (I think by Cecil) read thus:

> International engagements intended to assure the preservation of peace, such as arbitration treaties, shall not be considered to be incompatible with the terms of the Covenant. In the same way, institutions or doctrines peculiar to certain regions, such as the Monroe Doctrine, shall not be considered incompatible with the terms of the Covenant, unless they obstruct Members of the League in the execution of their obligations.

and on this paper, showing perhaps Cecil's idea, he had stricken out the words commencing "unless they" and written instead the following:

> it being well understood that no Member of the League desires under cover of this Article to withdraw from the obligations securing peace imposed upon it by this Covenant.

Still another British translation of the latter part of the French proposal was this:

> The same shall apply to all institutions or doctrines applicable to certain regions, such as the Monroe Doctrine, in as far as no obstacle to the execution of their obligations is created for the signatory states.

It may seem hardly worth while to reproduce such informal papers as these; but I think they are of some value in showing how the discussions were carried on. House was sitting on Wilson's left, then came Cecil and then Smuts. My place was just back of the interval between Wilson and House. Shepardson and Philip Baker were both very near me and we were in the habit of exchanging whispered or written comments as the discussions went on.

Some of the remarks of Mr. Wilson from time to time during the debate were thus taken down by one of our stenographers:[1]

> I do not think there is a thing, and if there is something or may be something in the Monroe Doctrine which is inconsistent with these obligations, and if there is, and I do not think there is, I am clear that there is not, but if there is, of course the obligations of the United States under this Covenant take precedence of anything that might stand in the way. There can be no doubt as to what the United States binds itself to in this Covenant, and I would urge that I don't like that suspicion cast upon the Monroe Doctrine.
>
> * * * * * *
>
> May I say this. There is no thought in America that the Monroe Doctrine interferes with the full performance of the obligations of the United States under the Covenant. There is in some quarters what I consider an unfounded impression that the Covenant

[1] I make no change in the notes as I have them, despite their obvious imperfections.

to some extent may invalidate the Monroe Doctrine. There is no thought in my mind that the Monroe Doctrine invalidates the Covenant, but there is in some minds the thought that the Covenant invalidates the Doctrine, so that we are seeking to remove that, as I believe, erroneous impression by distinctly saying, there is nothing in this Covenant inconsistent with the Monroe Doctrine. Now, if there is anything in the Monroe Doctrine inconsistent with the Covenant, the Covenant takes precedence of the Monroe Doctrine, not only because it is subsequent to it, but because it is a body of definite obligations which the United States cannot explain away even if it wanted to explain Anybody reading the Covenant and seeing the assent of the United States appended can not [?] * * * * * * * * bring its forces to Europe whenever it is obliged to do so by the terms of this Covenant. That is the only thing, that until this time, the United States never did. It is one thing that it never wanted to do, but it is one thing that it is consciously consenting to in becoming a member of this League; so that it is reversing its whole historic [?] * * * in assenting to this Covenant and it needs to be assured that in doing that it is not invalidating long-continued understandings on the other side of the water, and therefore, I earnestly hope that the suggestion will not be pressed that the original language be altered.

* * * * * *

I respectfully urge that in phraseology of that sort we are casting suspicion upon the good faith of the United States in signing this Doctrine. I mean that any language of that sort is susceptible of that interpretation. How could the United States consciously sign this Doctrine if the Monroe Doctrine was incompatible with it? It is inconceivable. You see, the whole object of this mentioning of the Monroe Doctrine is to relieve a state of mind and misapprehension on the other side of the water; relieve the minds of certain conscientious public men in the United States who want to be assured that there is no intention in this League to interfere with the Doctrine, which if they all knew to be inconsistent with the Covenant, they would not in the same breath ask for an explanation like this and ask to be admitted with a League which was inconsistent with a situation like this.

* * * * * *

I understand that the French intend to publicly oppose this Article. That would create a most unfortunate impression on the other side of the water.

* * * * * *

To M. Larnaude:

It seems to me that all your objections are similar in the thought they express, namely, that they all really question the validity of the adherence of the United States to the Covenant.

As the discussions proceeded, I wrote still another note for Mr. Wilson on the French proposal:

The original language contains nothing which the French can rightly possibly object to. Study of the language of the amendment increases my unfavorable opinion of it.

A later redaction of the French proposal was written out in pencil at the meeting by Larnaude as follows:

Ne sont pas considérés comme incompatibles avec les dispositions du présent Pacte les engagements internationaux destinés à assurer le maintien de la paix tels que les traités d'arbitrage.

Il en est de même de tous autres engagements quels qu'ils soient, en particulier de ceux propres à certaines régions, commes ceux qui résultent de la Doctrine de Monroe, en tant qu'ils sont destinés au maintien de la paix que le présent Pacte a pour but d'assurer.

However, the French proposals came to nothing; the Monroe Doctrine amendment was not changed from the language originally proposed, becoming, however, Article 21. This of course automatically changed the numbers of the succeeding Articles, former 21 becoming 22 and so on.

One change, resulting from the debates on the Monroe Doctrine, was made in Article 20 at the suggestion of Mr. Koo. That was the insertion of the words "or understandings," [1] so that the first paragraph of Article 20 read, as it reads now, as follows:

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

This satisfied Mr. Koo's doubts as to the language of the Monroe Doctrine Article; and after the meeting he told me that

[1] My notes had the words "and understandings" as those adopted; but all the notes of others had the word "or." The meaning is the same.

he was much pleased with the result and was inclined to think that I was right in what I had told him on the afternoon prior to the meeting, particularly in view of the adoption of his amendment.

Toward the close of the meeting the Japanese brought forward their final proposal for race equality by way of an amendment to the Preamble; its text, as it was laid on the table in English and French,[1] was this:

> (To be inserted in the Preamble after "relations between nations," and before "by the firm establishment," etc.)
> . . . by the endorsement of the principle of equality of nations and just treatment of their nationals,
>
> Insérer entre "honorables entre les peuples" et "l'affirmation expresse":
> l'acceptation du principe de l'égalité des nations et du juste traitement de leurs nationaux,

The presentation of this proposal by the Japanese delegates was very admirably done. Baron Makino read a carefully prepared statement, which the minutes have in full. Viscount Chinda also spoke. It seemed as if they were supported by the feelings of almost every one present. Lord Robert Cecil refused to accept the amendment and stood on his refusal, acting, as he said, under instructions from his Government. It seemed to me at the time that Cecil felt that he was performing a difficult and disagreeable duty. After making his statement Cecil sat with his eyes fixed on the table, and took no part in the subsequent debate. The minutes condense a good deal what was said; but Orlando, Bourgeois, Larnaude, Veniselos, Kramář and Koo all spoke in favor. Indeed, the form of the proposal was such that to formulate any objection to its language was not an easy task. No one could very well say that he objected to the principle of equality of Nations or that he favored unjust treatment of any nationals; but however unobjectionable the words, as words, might be, their very vagueness could only mean that they were a sort of curtain behind which was the question of White Australia and of immigration of Eastern peoples into countries which regarded the possibility of such immigration as impossible to discuss.

[1] Note that the proposal in French refers to the French text of the Preamble as of February 14, which is Annex II to the French minutes of the Tenth Meeting in Document 20, and not to the French translation of the Drafting Committee text, which is Document 36.

From the standpoint of the terms of the proposals, the matter was very well put by Veniselos, who

> reminded the Commission that he had been largely responsible for the disappearance of the religious liberty clause from the Covenant. He had thought that if this clause were cut out the difficulty relative to the racial question would likewise be eliminated. Today, however, the question had appeared in a different light and Japan had taken her stand upon another ground; they were talking not of the equality of races, but of the equality of nations themselves and of just treatment of their nationals. It would be very difficult to reject such a proposal especially since Baron Makino had carefully pointed out that his proposal did not involve any State in the obligation to pass any measures whatever with respect to immigration. If the Japanese amendment were accepted and were written into the Preamble, a clause relative to religious liberty might also be introduced.

The other view was stated in a phrase by Colonel House. While this Japanese proposal was up, he wrote for the President the following note:

> The trouble is that if this Commission should pass it, it would surely raise the race issue throughout the world.

Mr. Wilson spoke on the matter, not directly against the Japanese idea, but rather suggesting the inadvisability of putting the amendment into the Covenant. However, his words speak best for themselves and thus they were taken down by an American stenographer:[1]

> Gentlemen, it seems to me that it is wisest that we should be perfectly candid with one another in a matter of deep importance like this. The trouble is not that any one of us wishes to deny the equality of nations or wishes to deny the principle of just treatment of nationals of any nation. The trouble is not with our decisions here, but with the discussions which would certainly be raised in the Plenary Council if the words suggested were introduced into this Covenant. My own interest, let me say, is to quiet discussion that raises national differences and racial prejudices. I would wish them, particularly at this juncture in the history of the relations of nations with one another, to be forced as much as possible into the background. We here have no choice as to the

[1] Cf. the summary of a few lines in the minutes.

part that is to be played by others of our colleagues of the Conference of Peace in the discussion of matters of this sort. It is not only in this room, but elsewhere, that attention has been drawn to this and similar suggestions, and those very suggestions have set burning flames of prejudice, which it would be very unwise to allow to flare out in the public view in the Plenary Conference. It is in my own mind for the purpose of quieting these prejudices, of letting them play no part in the discussions connected with the establishment of this League, that I am looking at this whole matter. How can you treat on its merits in this quiet room a question which will not be treated on its merits when it gets out of this room? It is a question altogether of the wisest thing to do, not a question of our sentiments towards each other or of our position with regard to the abstract statement of the equality of nations. This League is obviously based on the principle of equality of nations. Nobody can read anything connected with its institution or read any of the articles in the Covenant itself, without realizing that it is an attempt—the first serious and systematic attempt made in the world to put nations on a footing of equality with each other in their international relations. It is recognized everywhere that this is an attempt, a most hopeful attempt, to secure for those nations which could not successfully protect themselves if attacked by the stronger nations of the world, the support of strong nations of the world in their defense. It is a combination of moral and physical strength of nations for the benefit of the smallest as well as the greatest. That is not only a recognition of the equality of nations, it is a vindication of the equality of nations. No one could question, therefore, the principle upon which this Covenant is based, and I think we ought to approach the present question which has been raised, in what I must call the very impressive [statement] by Baron Makino, from the point of view of what it is wisest to do in connection with the discussion which will attend the institution of this great League. I know from my own knowledge of their attitude and character that these considerations apply strongly to the very thoughtful men who represent Japan at this table. In presenting this matter they are doing their duty; they are doing it with conscious solemnity. But, I am saying what I have just said with a view of avoiding the very embarrassments which I think they have in mind. I offer these suggestions with the utmost friendship, as I need not assure my Japanese colleagues, and with a view to the eventual discussion of these articles.

The amendment was pressed to a vote, but only the affirmative vote was taken; the objection of Cecil prevented its adoption despite the fact that the majority of the Commission were recorded in the affirmative. My notes show that the eleven

votes [1] in favor of the proposals were cast as follows: by Japan, France and Italy, two each; and by Brazil, China, Greece, Yugoslavia and Czecho-Slovakia. The minutes, speaking of the vote, say that eleven votes out of seventeen were recorded in favor of the amendment. The two members of the Commission who were absent were Smuts and Hymans. The negative vote was not taken, so the American delegation and also the other three delegates present, from Portugal, Poland and Roumania, were not formally recorded. Of these last, only Dmowski, according to the minutes, had spoken during the debate.

Mr. Wilson's statement on the vote was taken down as follows:[2]

> I will put the question to a vote. All in favor of incorporating the phrase will be kind enough to raise their hand. I have counted eleven.
>
> It has been our practice to make the vote unanimous when incorporating a provision unless those who have entered (voted?) are willing to let a provision be incorporated as (with?) a reservation on their part.
>
> I think there are too serious objections on the part of some of us to make that possible.

In other words, Wilson ruled in this case that unanimity was necessary when an objection was finally pressed. Larnaude dissented from this ruling, claiming that it was not in accordance with previous rulings; but Wilson sustained his ruling, saying:

> I think that M. Larnaude is mistaken. I follow the course of saying that then the proposition was adopted if there was no objection. In several cases, the French delegates have merely made a reservation; have stated that they would not insist upon their objection. Whenever an objection has been insisted upon, I felt obliged to say that it has not been adopted. At least one objection is insisted upon by one of the Governments concerned. I am obliged to say that it is not adopted.

Regardless of any question of procedure, it was clear that the objection of the British Delegation was of such a character that, notwithstanding the views of the United States or of any other delegations, the Japanese proposal could not become part of the Covenant.

[1] A majority of the nineteen members of the Commission.
[2] Cf. the minutes as to this and also the remarks quoted *infra*.

Wilson closed the discussion with the following words:

> I have gone on the principle that any objection insisted upon was an obstacle to the adoption. I do not think that anybody will ever interpret the result of this evening's discussion as a rejection on our part of the principle of equality of nations.

Mr. Shepardson prepared a statement in regard to the Japanese proposal. The next day, Colonel House told Mr. Shepardson to show it to the Japanese and say to them that perhaps President Wilson would give it out if they wished it, but that it would not be given out if they did not wish. My recollection is that it was never used, but it is well worth reproduction:

> At a meeting of the League of Nations Commission on Friday, April 11th, the Japanese Delegation proposed an amendment to the Preamble of the Covenant, as follows: To insert after the words "by the description of open, just and honorable relations between nations" an additional clause to read "by the endorsement of the principle of equality of nations and just treatment of their nationals."
>
> The amendment was admirably presented by Baron Makino. In the course of his speech he emphasized the great desire of the Japanese Government and of the Japanese people that such a principle be recognized in the Covenant. A discussion followed, in which practically all of the members of the Commission participated. The discussion was marked by breadth of thought, free and sympathetic exchange of opinion, and a complete appreciation by the members of the Commission of the difficulties which lay in the way of either accepting or rejecting the amendment.
>
> The Commission was impressed by the justice of the Japanese claim, and by the spirit in which it was presented. Mention was frequently made in the course of discussion of the fact that the Covenant provided for the representation of Japan on the Executive Council as one of the five Great Powers, and that a rejection of the proposed amendment could not, therefore, be construed as diminishing the prestige of Japan.
>
> Various members of the Commission, however, felt that they could not vote for its specific inclusion in the Covenant. It was pointed out that the Preamble, as it stood, laid down principles which were developed in detail in certain articles of the Covenant; and that it would therefore be inconsistent with the nature of the Preamble to include in it any general statement which was not so subsequently developed. It was further said that the phrase "by the prescription of open, just and honorable relations between nations" expressed a broad principle in harmony with the Japanese

amendment, and that its scope might be restricted if an attempt were made to define it more closely.

Other members of the Commission felt that the proposed amendment was of ambiguous significance, that it was either formal or substantial. If formal, it would provoke a great deal of criticism generally which would not be warranted by its intent. If substantial, it would contravene that clause of the Covenant which reserves to the decision of the several States members of the League matters which are solely within their domestic jurisdiction.

For these reasons the Commission was reluctantly unable to give to the amendment that unanimous approval which is necessary for its adoption.

By the time the Japanese amendment had been voted on the hour was very late. The subsequent discussions were hurried and the minutes do not give a very clear account of what was done.

As I pointed out above [1] there is no doubt that the French text was considered and that Larnaude and I were appointed a Committee on the subject. The question as to the four States to be named on the Council in addition to the five Great Powers was also brought up; but as no action was taken it was left to the Conference.

In effect the Commission adopted an Annex to the Covenant, mentioned in Article 1; but no form of Annex [2] was passed on and no list of neutral States to be invited was agreed to, although mention was made of the thirteen countries that had laid their views before the Commission.[3] This matter of the invited Neutrals was to come up later, but a part of its history may be told now. Earlier in the day (April 11) at the close of one of the Plenary Sessions of the Conference I had talked with Secretary Lansing about the Annex and regarding the States that should be invited to join the League. Mr. Lansing expressed the opinion that both the Dominican Republic and Mexico should be invited, but not Costa Rica. I mentioned the question of these three States to Colonel House on April 12 and at his direction I wrote this memorandum for the President about them:

Thirteen neutral States are to be invited to accede to the Covenant.

[1] See p. 439 *sqq.*
[2] See p. 409.
[3] See Document 25.

Not included in those thirteen States are the following:

1. Costa Rica.

   While a belligerent, Costa Rica is not invited to the Conference and we do not recognize the Government of Tinoco. It is assumed that Costa Rica should not be invited.

   In my opinion such an invitation would be recognition.

2. Mexico.

   Lord Robert Cecil is quite opposed to the inclusion of Mexico.

   Mr. Lansing expressed to me an opinion in favor of the invitation.

   I believe that the present Government of Mexico has not been recognized either by Great Britain or France, and the invitation would, in my opinion, be a recognition of that Government by those countries.

3. Santo Domingo.

   Mr. Lansing expressed to me an opinion in favor of the invitation.

   I am inclined to think that Mr. Stabler believes that such an invitation would be inadvisable.

   Santo Domingo was represented at the Second Hague Conference.

Colonel House sent my memorandum up to the President with this notation: "Dear Governor: Will you not initial the ones to be invited, if any? E. M. H."

Mr. Wilson's decision was made in the following words of his letter to me of April 15:

> In returning this memorandum which you were kind enough to send me, let me say that I think on the whole it would be wise not to include any one of these three states in the invitation.

Finally, although the minutes here are quite vague, the Commission seemingly [1] adopted a resolution for an Organization Committee in this form, differing slightly from my draft: [2]

> Resolved that in the opinion of the Commission the President should be requested by the Conference to invite seven Powers, including two neutrals, to name representatives on a Committee
>
> a. to prepare plans for the organization of the League
>
> b. to prepare plans for the establishment of the Seat of the League

[1] See the French Note of April 22, quoted at p. 484.
[2] See p. 451.

c. to prepare plans and the Agenda for the first meeting of the Assembly.

The Committee shall report both to the Council and to the Assembly.

As I indicated above, it was very late, nearly one o'clock in the morning, when the Fifteenth Meeting of the Commission adjourned. Although it was known to be the last meeting which the Commission would hold, there were none of the customary closing remarks as there had been a good deal of feeling displayed, particularly by the French, and the Japanese were undoubtedly very disappointed. From my own point of view, the evening was a most exhausting one of continuous work. President Wilson called me into consultation on almost every point that came up during the four hours; incidentally I had had no dinner and had quite a little work to finish after the meeting ended.

The English text of the Covenant resulting from the last two meetings of the Commission on April 10 and 11 was presumably to be the final English text. The changes which had been made in the text reported by the Drafting Committee (Document 30) were very few; they have all been mentioned above, but for convenience I summarize them here:

In Article 5, the order of the first two paragraphs had been changed, without change in language.

"Geneva" had been inserted in the blank in Article 7.

Article 12a (the Japanese Amendment) had been omitted.

In Article 15 the first parenthetic proposal had been stricken out and the second had been left in.

The words "or understandings" had been inserted in Article 20, after the word "obligations".

The Monroe Doctrine Amendment had been inserted as Article 21 and the subsequent Articles renumbered accordingly 22 to 26 (instead of 21 to 25)

A proviso [1] had been added to the final Article (now 26) relating to amendments to the Covenant.

It is unnecessary to make any separate print of the text showing these changes.[2] They were not at all modified in the text of the Covenant which became part of the Treaty of Ver-

[1] For the language of this see p. 456.

[2] They are sufficiently shown in Document 31, which incorporates them with a few other modifications, described at pp. 472-476.

sailles, except as to one very trifling and verbal alteration [1] of the amendment to Article 26.

Numbering of the Covenant Articles

This note on the numbering of the Articles of the Covenant refers to English Texts only and covers the changes in arrangement etc. from the Hurst-Miller Draft (Annex 1 to the minutes of the First Meeting of the Commission on the League of Nations in Document 19) to the final text in the Treaty of Versailles (Document 34).

The intermediate Drafts to be mentioned are as follows:

Covenant of February 14 (Annex to the minutes of the Tenth Meeting of the Commission in Document 19; this text also appears in Document 24).

Draft of March 18 agreed on between Wilson and Cecil (Document 24).

Draft of March 26, following the Eleventh to Thirteenth Meetings of the Commission (Document 27).

Text of Hurst and Miller for Drafting Committee, March 31 (Document 28).

Text from Drafting Committee, April 5 (Document 30).

The English Text of April 21 (Document 31) is *exactly* the same in arrangement as the final Treaty text and requires no further mention.

There is a tabular statement at p. 129 which shows the arrangement changes from the Hurst-Miller Draft to the Covenant of February 14; and Document 24 indicates in parallel columns the renumbering which resulted from the Wilson-Cecil agreement of March 18; the following tabulation includes *all* such changes, its basis being the final Treaty of the Covenant.

ARTICLE I

Paragraphs 1 and 2 originated as Article 6 of the Hurst-Miller Draft, which became Article 7 of the Covenant of February 14 and in Documents 24 and 27; with the added accession clause, the next change was to two Articles, 1 and 26, in Document 28; and in Document 30 the present position of the paragraphs became fixed.

Paragraph 3, the withdrawal clause, first appears in Document 27 as paragraph 2 of Article 24 and similarly in Document 28. In Document 30 it became finally the last paragraph of Article 1.

ARTICLE II

This was Article 1 of the Hurst-Miller Draft and thereafter until Document 28, when it became and remained Article 2.

[1] See p. 473.

ARTICLE III

In origin, this Article was most of Article 2 of the Hurst-Miller Draft. It continued as Article 2 until Document 28, when it became and remained Article 3.

ARTICLE IV

This Article was numbered 3 in the Hurst-Miller Draft and thereafter until Document 28, when it became and remained Article 4.

ARTICLE V

The procedure clause of this Article, paragraph 2, was the last paragraph of Article 2 of the Hurst-Miller Draft. With its other two paragraphs added, the Article became 4 of the Covenant of February 14, and was so numbered until Document 28, when it became and remained Article 5.

ARTICLE VI

This Article was numbered 4 in the Hurst-Miller Draft and became Article 5 of the Covenant of February 15 it continued as Article 5 until Document 28, when it became and remained Article 6.

ARTICLE VII

The first two paragraphs of this Article relate to the Seat of the League; provision for such a Seat was made in the opening sentence of Article 4 of the Hurst-Miller Draft, which as above stated became Article 5 of the Covenant of February 14 and in Documents 24 and 27; in Document 28, separate clauses for the Seat of the League became and remained the opening portion of Article 7.

The third paragraph of this Article, relating to women, originated as Article 25 in Document 27 and had the same number in Document 28; it became the third paragraph of this Article in Document 30.

The last two paragraphs of the Article, relating to diplomatic privileges etc., were Article 5 of the Hurst-Miller Draft and Article 6 of the Covenant of February 14 and in Documents 24 and 27; in Document 28 they became and remained the final paragraphs of this Article.

ARTICLE VIII

This (Disarmament) Article had the same number throughout.

ARTICLE IX

This Article originated in the Covenant of February 14 and thereafter retained the same number.

ARTICLE X

This was Article 7 of the Hurst-Miller Draft and in all the subsequent Documents was Article 10.

ARTICLES XI-XVII

In the Hurst-Miller Draft these Articles were numbered 9 to 15 inclusive; in all the subsequent Documents they had their present numbers.

ARTICLE XVIII

This Article (registration of treaties) was numbered 21 in the Hurst-Miller Draft, 23 in the Covenant of February 14; it was Article 21 in Documents 24, 27 and 28; it was Article 18 in Document 30 and thereafter.

ARTICLE XIX

This Article (revision of treaties) originated as Article 24 in the Covenant of February 14 and was numbered 22 in Documents 24, 27 and 28; it was Article 19 in Document 30 and thereafter.

ARTICLE XX

This Article (inconsistent treaties) was Article 22 of the Hurst-Miller Draft, numbered 25 in the Covenant of February 14; it was Article 23 in Documents 24, 27 and 28; it was Article 20 in Document 30 and thereafter.

ARTICLE XXI

This (Monroe Doctrine) Article originated in Document 31.

ARTICLE XXII

This (Mandates) Article was Article 17 of the Hurst-Miller Draft, it became Article 19 of the Covenant of February 14; it was numbered 18 in Documents 24, 27 and 28; it was Article 21 in Document 30 and Article 22 thereafter.

ARTICLE XXIII

This Article includes Articles 16, 18 and 20 of the Hurst-Miller Draft which were numbered respectively 18, 20 and 21 in the Covenant of February 14; with additions it became Article 19 in Documents 24, 27 and 28; it was Article 22 in Document 30 and thereafter 23.

ARTICLE XXIV

This Article originated as Article 22 of the Covenant of February 14 and became Article 20 in Documents 24, 27 and 28; it was Article 23 in Document 30 and thereafter 24.

ARTICLE XXV

This (Red Cross) Article originated as Article 24 in Document 30; thereafter it was numbered 25.

ARTICLE XXVI

This (amendments) Article originated as Article 26 of the Covenant of February 14; it was Article 24 in Document 24 and was the first paragraph of Article 24 in Documents 27 and 28; it was Article 25 in Document 30 and thereafter 26.

CHAPTER XXXIV

LATER CHANGES

The English text of the Covenant as adopted by the Commission on the League of Nations was forthwith printed by the American printers, under my direction.

In sending copy to the printer, I recast the paragraphing of Articles 6 and 7, so as to agree with the paragraphing of the French text as it was then proposed. I also made a change in the final Article (Article 26) which had been amended by the Commission. The amendment had been adopted in the American form of a proviso,[1] very commonly used even when the clause is not really a proviso at all. In any case this form is quite awkward in French, so I struck out the words "provided that" and left the rest of the amendment as a separate sentence. The Article thus read as follows:

> Amendments to this Covenant will take effect when ratified by the States whose Representatives compose the Council and by a majority of the States whose Representatives compose the Assembly. No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

In sending the President copies of the paper I thus explained the change:

> The words "provided that" have been omitted from the addition to Article XXVI in order to divide the Article into two sentences, particularly as in this form the language will probably be more in accord with the French text.

Only a few copies of this print were made.[2] I sent three of them to President Wilson, ten to Colonel House and three to the British Delegation. House thought it was very important

[1] See p. 456.

[2] I do not reproduce it. See the following account of changes made before the next print, which is Document 31.

that it should not be known at the time that this text had been printed at all. It was, however, essential that it should be printed, partly as a record of the precise text as it stood at that date and also for use in the preparation of the French text.

Even now the English text was not complete. There was a blank to be filled in sometime in Article 4, the names of the four States on the Council; and the Annex, while adopted in principle, was not yet definitive. Furthermore (as it turned out) other changes were to be made, some in connection with the French text, some to meet the wishes of the British, one at the Plenary Session of the Conference and some during the printing of the Treaty of Versailles.

The first changes made resulted from the consideration of the French text. While I devote a separate chapter to this matter, I may say here that at this time, from April 12 on, I was constantly in conference with Major Butler of the British regarding the French text; and at our first discussion of it with the French representatives, on April 15, I drew up a tentative redraft of the then first two paragraphs of Article 1, partly because the English was not clear and partly because the change would facilitate the French version. This redraft [1] is identical with the first paragraph of Article 1 of the Covenant in the Treaty of Versailles.

Cecil had gone to London and on April 16 Butler telephoned me that Cecil had told him that he thought there should be no change in the English text unless it was approved by President Wilson as Chairman of the Commission. I explained to Butler the enormous difficulties that would be raised if this was attempted before the French text was finished, the discussion of which was then actively going on; with some hesitation, Butler agreed to this.

At about this time it was agreed also to strike out the words [2] "voting shall be by States" in Article 3 and also in Article 4; and we also agreed to some paragraphing changes, the tendency of all of which was to make shorter and more numerous paragraphs in accordance with the French style, which to my mind is the better English style also. My note on the changes, made at the time (written on April 17) follows:

[1] My note on my copy of the draft reads:

Last proposal to Butler 15 April, 1919. Butler said by phone Hurst agreed 16 April, 1919.

[2] They were superfluous, in view of the explicit statement as to one vote for each Member of the League.

I have agreed with Butler of the British, Hurst having approved, that the first two paragraphs of Article I of the English text shall be re-cast so as to read as follows:

> "The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League."

This has also been agreed with de Lapradelle, but remains subject to the approval of Larnaude and also the President as Chairman of the Commission, or of the Commission as a whole.

I have also recommended to Butler that the following change be made in the English text in Article III, last paragraph: Strike out "voting shall be by States"; and in the last paragraph of Article IV strike out precisely the same thing.

Butler said that Hurst agreed to this.

I also agreed with Butler to make three paragraphs out of the first paragraph of XIII.

I agreed with Butler to make a new paragraph in Article XV, commencing with the words "for this purpose" in the present first paragraph.

On April 19, these changes having been agreed to by Professor Larnaude as well as by the British, I took up the matter of having them approved by President Wilson. I wrote a memorandum on the subject and this memorandum, with a copy of the then latest print [1] of the Covenant marked to show the changes, I took over to House and told him that Cecil wanted formal approval of these changes by Mr. Wilson as President of the Commission. House approved of them. I then went to see President Wilson and explained the changes; he examined very carefully the marked text of the Covenant and then gave his approval.

Then Butler and I on the same day (April 19) got up this memorandum for circulation by the Secretariat of the Commission describing the changes:

> In connection with the preparation of the French text of the Covenant the following slight drafting changes were made in the English text by the Committee (Professor Larnaude and Mr. Miller) appointed by the Commission.

[1] See p. 473.

These changes were approved by President Wilson as President of the Commission and do not in any way affect the meaning of the text.

1. Recast the first two paragraphs of Article I so as to read as follows:

> "The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League."

2. Strike out as redundant from the last paragraph of Article III the words "voting shall be by States," and similarly strike out from Article IV the same words.

With these changes, the English text was at once reprinted by the American printers. Except as mentioned above in this Chapter, the text was literally that adopted by the Commission. This print, however, which is Document 31 (completed April 21) for the first time contained, as part of it, the Annex, which, as then printed, is almost literally the Annex as it appears in the Treaty of Versailles, except that Czecho-Slovakia appears in the order of the English spelling, after Cuba, instead of after Siam in the French order. Even this matter had been considered critically, as shown by this memorandum:

1. Czech—The German spelling. Preferred by Mr. Kerner, who says it is also preferred by Dr. Masaryk.
2. Tschek—Alternative German spelling.
3. Tchèc—The French spelling.
4. Tchech—An occasional English spelling, used in some reports of the Paris Conference.
5. Čech—The native spelling.

I had spoken to Butler about the Annex on April 17, when he told me that it would be only tentatively approved in Cecil's absence.

On April 20 I saw Colonel House and spoke to him about the necessity of choosing four States to be represented on the Council of the League, to be named in Article 4 of the Covenant. I also said that the Covenant was ready except that the Annex, which I showed him, would perhaps have to be changed for the

British to put in Newfoundland. House said to see Cecil and to say to him that he hoped they would not put in Newfoundland as we had had enough trouble about the Dominions already; and also for me to try to come to an agreement with Cecil about the four States that were to go in, and that he would think further about it. He also mentioned to me that the present intention was to name Sir Eric Drummond as Secretary General.

I went to see Cecil and after some discussion we agreed on Belgium, Brazil, Spain and Greece as the four States. We thought that Belgium and Brazil were more or less inevitable; that it was necessary to choose a neutral, and Spain was the largest, the only possible alternative being Norway; and that Greece was the best of the Balkan States. I thought that perhaps China should be selected instead of Greece but was convinced on this point by the idea that, for the present, one Asiatic Power was enough.

While my Diary says nothing about it, I have a recollection that Mr. Balfour and Colonel House talked over this matter the same afternoon and that they then agreed on the four States mentioned.

The next day Colonel House told me to write a letter to the President calling his attention to the necessity of appointing a Secretary General, so I wrote as follows to the President, sending him with the letter a copy of the latest print of the Covenant, (Document 31) which included the Annex:

> By direction of Colonel House I have the honor to call your attention to the following provision of Article VI of the Covenant:
>
> "The first Secretary General shall be the person named in the Annex."
>
> It will be observed from the text of the Covenant which is enclosed that provision has been made in the Annex for the insertion of the name of the Secretary General.
>
> I ventured to suggest to Colonel House that the choice should be made by the Council of Four and the name inserted in the Treaty when finally drafted.

The question as to whether or not the British Dominions and India by the terms of the Covenant were or should be eligible as Members of the Council of the League now came up and caused a good deal of difficulty during the next few days. The vital language was in Article 4: "The Council shall consist of . . . together with Representatives of four other States which are

Members of the League"; and the Article went on to use the word "States" four times and "State" once, in referring to the Members of the League on the Council. This language ("States which are," "States" etc.) excluded Canada and the rest, for although Members of the League they were not strictly States; if it had read simply "four other Members of the League" with "States" changed to "Members of the League" etc. India would be as much within the words as Holland.

On April 21 Butler telephoned me that the British delegation had met that day and wanted to make some changes in the Covenant by inserting the words "Member of the League" instead of "State." I told him that I did not see that I had any power to agree to this. Later on, Mr. F. L. Walters, Cecil's secretary, talked with me about this over the telephone and sent me this letter on behalf of Cecil:

> I enclose herewith a copy of the Covenant in which I have indicated the places in which the word "State" has been kept where the words "Member of the League" ought I think to be. This alteration is the only change made, except in the third line of Article IV, where the words "States which are" should be omitted.
>
> I am clearly of opinion, and I hope that you and Colonel House (with whom I understand you are taking counsel in the matter) will agree with me, that these are not in any way substantive changes, but correct the failure on the part of the Drafting Committee to express the sense of the Commission. I propose, if you agree to this course, that to all members of the Commission should be circulated a statement of the changes in question, with the note that if any member so desires, a meeting of the Commission must be held to discuss them; but that otherwise they will be embodied in the Covenant as presented to the Conference.

The marked copy of the Covenant enclosed with this letter was the English text as it then stood (Document 31). Referring then to that text, the following were the desired changes indicated:

> In Article 4, first sentence of first paragraph, strike out the words "States which are."
>
> In thirteen places, strike out "States" (or "State") and insert "Members (or Member) of the League", these thirteen places being:
>
> Article 4, first paragraph (twice).
> Article 4, second paragraph (twice).
> Article 4, last paragraph.

Article 5, first paragraph.
Article 5, second paragraph.
Article 15, fifth paragraph.
Article 15, last paragraph.
Article 16, first paragraph (twice, in each case after "covenant-breaking").
Article 26 (twice).

Aside from Article 4, some of these changes were immaterial or from the point of view of drafting, as, for example, in Article 5, even desirable. However, as to the changes in Article 4, it was perfectly clear to my mind that I had no authority whatever to consent to them. It will be convenient to see here just how the first two paragraphs of Article 4 then read:

> The Council shall consist of Representatives of the United States of America, of the British Empire, of France, of Italy and of Japan, together with Representatives of four other States which are Members of the League. These four States shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four States first selected by the Assembly, Representatives of..... shall be members of the Council.
>
> With the approval of the majority of the Assembly, the Council may name additional States whose Representatives shall always be members of the Council; the Council with like approval may increase the number of States to be selected by the Assembly for representation on the Council.

The second paragraph of that Article, in using the word "States" made a clear and definite limitation. So did the language of the first paragraph for that matter. It is true that in the Covenant of February 14 the opening sentence of Article 4 (then Article 3) had read "Representatives of four other States Members of the League" and that by my proposal [1] to Hurst to change generally throughout the text the expression "States Members of the League" to "Members of the League," this expression became "Representatives of four other Members of the League"; and this was the language which Hurst and I had proposed for the Drafting Committee on March 31 (see Document 28). But the second sentence of the first paragraph in that text used the word "States," which it was not proposed to change, so that the meaning would have been the same; and curiously enough the Drafting Committee was not content with the change

[1] See p. 391.

proposed, and at the British suggestion (see Document 29), changed the language in the first sentence to "four other States which are Members of the League." Assuming the desirability of the eligibility of the Dominions on the Council, it was not for me to alter the language, for it was a good deal more than a matter of drafting.

I talked with Colonel House about the wish of the British to have these changes made as indicated by Cecil's letter. I told him I did not see how they could be agreed to without a meeting of the Commission. House said he thought so too and added that he did not want any change made so that the British Dominions could be represented on the Council.

So that evening I considered the matter further and made a draft of an answer to Cecil which I drew up in final form the next morning, April 22:

> I have considered and discussed with Colonel House your letter of April 21 suggesting certain changes in the Covenant.
>
> It seems to me necessary to make some observations upon these changes in detail.
>
> In the second paragraph of Article IV it is provided that,
>
> "The Council may name additional States whose representatives shall always be members of the Council."
>
> It seems to me that it was clearly the intention of the Commission to limit this permanent representation not only to States but to Great Powers. I do not think that it was at all intended that a Dominion or a Colony should possibly be added to the list of the Great Powers permanently represented on the Council.
>
> As to the Powers represented from time to time on the Council, I am inclined to take the same view, namely: that it was the intention of the Commission to exclude the Dominions and Colonies from such representation. The subject was not, so far as I recall, specifically discussed, but the representation of the smaller States was debated at great length, and was always debated, so far as I remember, as the representation of States. The number finally agreed upon was four, and I believe that if it had been suggested that of those four at any given time New Zealand and the Philippines might be two, the whole subject of the representation of the smaller States would have been re-opened. I am the more inclined to this view when I think of the first proposal regarding the representation of the smaller Powers, which was that only two should be represented. In such a case if the Dominions and Colonies were to have representation, it might be that at a certain period the small States would have no representatives in the Council at all.

While I do not remember discussion of this subject by the Drafting Committee, according to my notes the words "States which are" were inserted in the first paragraph of Article IV by the Drafting Committee in its meeting on April 1.

Some of the changes suggested in other articles might perhaps be made, for example the two changes suggested in Article V and the second change suggested in Article XXVI.

The two changes suggested in Article XV and the first change suggested in Article XXVI would, I think, only be necessary if the changes which you propose in Article IV were adopted by the Commission.

I may add that simply from the point of view of drafting, I think that no change should be made in Article XVI in any event, as I cannot imagine a Dominion or Colony being separately at war.

Feeling as I do as to the effect of the amendments, you will appreciate that I am obliged with regret to differ from your conclusion; for I believe that the changes which you propose would require the approval of the Commission itself and that I am wholly without authority to agree to them.

I point out that my letter says nothing about the American policy or attitude as to these proposals, a point I discuss later.

Before sending this letter I took it over to House and he approved it. In the evening of that day House told me that he had sent to the President a copy of my letter to Cecil with a note saying that I had written it at his suggestion and that he hoped that the President approved; and that the President had written on it the usual form of notation for such action: "Approved. W. W."

During the day Butler came to see me, and I agreed with him to insert the word "international" in Article 23 (a), as had been requested in a letter from Walters of that date, and also to make each of the two sentences of Article 26 a separate paragraph. A memorandum of these corrections was drawn up and sent out in due course by the Secretariat of the Commission on the League of Nations.

House told me that day that Cecil was very much "up in the air" about the changes that the British wanted in the Covenant for the Dominions; the Dominions felt that they were being discriminated against although they did not expect to be on the Council and did not want to be.[1] House suggested to Cecil that he should see President Wilson in the matter.

Cecil telephoned me during the next day (April 23) that the

[1] Canada became a Member of the Council at the Eighth Assembly (1927).

British had prepared a Memorandum of the changes desired by them which they wished circulated to the members of the Commission; and that President Wilson had agreed that this Memorandum might be circulated and that he would not oppose it. Accordingly I told Cecil that I would have it circulated and later on Butler came in and left it with me. I took the paper over to House and showed it to him and he said that it was quite all right and that the President did not feel that he wanted to oppose the British in the matter. House told me that he had sent word to Cecil that while the President took this view, he also thought that the position which I had taken in the matter was right and had approved of it.

It will be necessary to make some comments on this Memorandum, particularly as it was not the end of the story. It was of course circulated as the British desired and read as follows:

> The British Delegation proposes the following corrections in the present draft of the Covenant:
>
> To substitute the words "Members of the League" for the word "States" in Articles IV, V, VIII, XV, XVI and XXVI where that word is used to indicate States which are members of the League: and in Article IV paragraph 1 for the words "States which are members of the League."
>
> As it will be necessary to circulate the Covenant to the Conference during the next few days, it is proposed, unless objection is taken to the above suggestions, to include them in the text as circulated. If, however, any Member of the Commission takes such objection, he is requested to ask the President of the United States to call a meeting of the Commission to discuss them.

The proposals of the British were not stated with complete accuracy in this Memorandum, for it does not distinguish between the singular and the plural. As I pointed out above,[1] "Members of the League" was proposed to be substituted for "States" in certain instances and "Member of the League" for "State" in others. The effect of the Memorandum, however, was to propose *all* the changes indicated by Cecil's letter of April 21 above quoted [1] and also three other similar changes. One of these was in the third paragraph of Article 16; this had apparently been overlooked previously, as the expression "covenant-breaking State" is precisely the same as in the first paragraph of that

[1] See p. 478 *sq.*

Article. The other two additional changes were in the second and fifth paragraphs of Article 8 (the Disarmament Article).

In view of Mr. Wilson's acquiescence in the ideas of the British on behalf of the Dominions there was nothing further for me to do regarding the changes; the question left was merely whether any objections would be made by any other delegation; and of course a new print of the English text was at once made by the American Printing Office, embodying all the changes to date, including those wanted by the British, as it was to be assumed that they were to be accepted.

I remained of the opinion, however, as I had intimated in my letter to Cecil of April 22, that the expression "covenant-breaking Member of the League" in Article 16 should not be used.

As the British Memorandum above quoted stated, it was open to any delegation represented on the Commission to object to the British changes and even to request a meeting of the Commission to consider them. The position which the French took in the matter was quite closely connected with various other points, one of which interested some officials at the Quai d'Orsay more than it did the French Government. This was the wholly impossible notion that Monaco should be invited, as one of the Neutral States, to join the League of Nations.[1]

It appeared from some correspondence in the matter, which I need not set forth at length, that M. Pichon [2] had promised the Minister of Monaco at Paris that there would be an opportunity for the presentation to the Commission of the views of that government regarding the League of Nations; and on March 31 the Minister, Count Balny d'Avricourt, had written to President Wilson in the matter. These papers had been referred to me on April 16 by the President and I had written in reply to the effect that no invitation had been sent to Monaco and that so far as I was aware neither the Commission nor the American Secretariat had ever known anything about the statement or promise of M. Pichon. It was not until a week or so later that I realized that this matter of the membership of Monaco in the League was troubling some of the French.

On April 22 there had been sent out a draft of the English Report of the Commission which Mr. Wilson had approved and

[1] A treaty had been signed on July 17, 1918, defining the relations between France and the Principality of Monaco. See Article 436 of The Treaty of Versailles.

[2] Then French Minister of Foreign Affairs.

which (in its final form) is Document 32. Under the same date the French Delegation presented this Note:

COMMISSION DE LA SOCIETE
DES NATIONS

22 avril 1919

NOTE DE LA DELEGATION FRANCAISE.

Les Délégués français à la Commission de la Société des Nations ont bien reçu le projet de rapport qui leur a été transmis par le Secretariat américain. La lecture de ce projet leur a suggéré les remarques suivantes:

1°—L'"Annexe" qui doit suivre le texte adopté par la Commission le 11 avril 1919 et qui contient la liste des Etats neutres invités à accéder au Pacte n'a jamais été soumise à aucune délibération de la Commission. Le choix des 13 Etats portés sur cette liste constitue une décision importante qui, dans la pensée des Délégués français, devrait être laissée, soit à la Commission, soit à la Conférence. Il leur paraît donc preférable de ne pas insérer dans le rapport une liste d'Etats invités.

2°—Sous le N° 6, le projet de rapport indique que la Commission aurait adopté la résolution suivante:

"La Commission est d'avis que la Conférence demande au Président de la Commission d' inviter sept Puissances dont deux neutres, à désigner des représentants à un Comité chargé:

a) de préparer des projets d'organisation de la Société.

b) de préparer des projets en vue de l'établissement du siège de la Société.

c) de préparer des projets et l'ordre du jour en vue de la première réunion de l'assemblée."

Cette résolution a été soumise à la Commission à la fin de la dernière séance (11 Avril) sans qu'une résolution ait été prise à son sujet. Au cours d'une rapide discussion, plusieurs membres ont fait remarquer qu'il appartenait à la Conférence de se mettre d'accord sur la composition et sur les pouvoirs de cette Commission. Les Délégués français estiment, en conséquence, qu'il est préférable d'indiquer que la proposition ci-dessus visée, a été, non pas "adoptée," mais simplement "soumise" à l'approbation des membres de la Commission.

Point 1 of this Note was the French way of saying that Monaco might be added to the list of the thirteen invited Neu-

trals. It was strictly correct, however, to state that the Annex had never been formally passed on by the Commission.[1] Point 2 of the Note was put in because the French had some fear that they would not be among the seven Powers to form the Organization Committee. As to the resolution, however, there was, as the French note suggested, at least some doubt as to just what had been assented to during the last five minutes of the final meeting of the Commission on April 11.[2]

This French Note came in on April 23, the same day that the British sent out their Memorandum [3] regarding their proposed changes. In response to this, calling it a Memorandum of the American Secretariat, the French at once sent this second Note:

COMMISSION DE LA SOCIETE
DES NATIONS

Paris, le 24 avril 1919

NOTE DE LA DELEGATION FRANCAISE.

En réponse au mémorandum du secrétariat américain en date d'hier, la délégation française est d'avis qu'il y a intérêt à demander à Monsieur le Président des Etats-Unis de vouloir bien réunir, le plus tôt possible, la Commission de la Société des Nations pour examiner les différentes questions qui restent encore à régler, notamment celles auxquelles se référait la précédente note de la Délégation française et qui concernent la liste des Etats invités à accéder au Pacte ainsi que le Comité d'organisation de la Société.

I repeat that during this period discussion of the French text with the French representatives was going on daily.

I took the French Note of April 24 over to Colonel House and told him that I thought it would be a crime to have a meeting of the Commission at this time, to which he assented. I told him the French had said to me that they wanted to add Monaco as a Member of the League and that I thought that an assurance that France would be one of the Powers on the Committee of Organization would help to smooth the matter over. House said that I could give such formal assurance, in the name of the

[1] See p. 466.
[2] See pp. 467 *sq.*
[3] See p. 482.

President, in writing if necessary. He asked me to see Cecil about the French Note, and I took it over to Cecil together with the reply which I had drafted. This reply (dated April 24), after some changes had been made by Cecil in its first paragraph, and after it had been approved by House and by Wilson, was delivered on April 25:

> Having considered the note of the French Delegation of this date, the President of the United States suggests that it is scarcely necessary to call a meeting of the Commission on the Society of Nations in connection with the two questions mentioned in the note of the French Delegation.
>
> So far as concerns the list of States to be invited to accede to the Covenant, it will be recalled by the French Delegation that the Commission at its final meeting was in accord that the thirteen neutral States previously invited to submit their views to the Commission should be likewise invited to accede to the Covenant. No suggestion was made as to any addition to this list desired by any member of the Commission, and it will in course be entirely open to any Delegation to propose to the Conference any possible addition to the list which may be desired or suggested.
>
> The French Delegation will also recollect that the resolution adopted by the Commission relative to a request to seven States to name representatives on a Committee of Organization of the League of Nations is by its terms merely a proposal by the Commission to the Conference.
>
> Accordingly, considering the very limited time now available, and also the very pressing engagements of the members of the Commission, the President of the United States suggests that any further discussion of the matters mentioned might preferably proceed before the Conference.

Before the French answered this American Note, they told me what their reply would contain, namely, that they would agree that there should be no meeting of the Commission, that the question of the States to be invited to accede to the Covenant should be referred to their Foreign Office and that they wanted eleven Powers on the Organization Committee. Colonel House was disposed to agree to this last suggestion. I took it up with Cecil by telephone on April 26; his idea was that the Organization Committee should be chosen from the same Powers as the Council. At about this time the French Note was delivered:

COMMISSION DE LA SOCIETE
DES NATIONS

25 avril 1919

NOTE DE LA DELEGATION FRANCAISE.

La Délégation américaine a bien voulu indiquer les difficultés qu'il y aurait à réunir actuellement la Commission de la Société des Nations; dans ces conditions, la Délégation française n'insiste pas pour qu'il y ait une séance mais elle tient à faire connaître ici les questions qu'il y a lieu d'examiner.

En ce qui concerne l'inscription, dans le rapport, d'une liste de 13 Etats Neutres "invités a accéder au Pacte," les Délégués français ne se croient pas autorisés à prendre une décision à cet égard et vont demander des instructions à leur Gouvernement pour savoir si celui-ci a des modifications à proposer au sujet de la liste précitée.

Quant au Comité formé par les représentants de 7 Puissances pour préparer l'organisation de la Société des Nations, les délégués français estiment qu'il y aurait tout avantage à augmenter le nombre des membres de ce Comité, de telle façon que sa composition rappelle celle du Conseil de la Société. Si cette vue était adoptée, le Comité pourrait comprendre les représentants des 5 Grandes Puissances, de 4 Puissances Alliées à intérêts particuliers et de 2 Puissances Neutres.

The French also made verbally their request regarding Monaco which was written out by Mr. Warrin as follows:

La Délégation française fait savoir le désir du Gouvernement français que l'Etat de Monaco figure parmi les Etats invités à accéder au Pacte.

But while these points raised by the French were adjusted, the objections of the French Delegation to certain of the changes proposed in the British Memorandum remained; and while these came up in connection with the final wording of the French text they were none the less specific objections to certain of the changes in the English text which the British wanted.[1] The French Delegation objected and finally stood on their objection to the substitution of "Member of the League" for "State" in Article 16 (thrice) and also to the similar change in the second paragraph of Article 8. The British were willing to yield so far as Article 16 was concerned, so that the real point of differ-

[1] See p. 482 *sq.*

ence was as to the second paragraph of Article 8, which then read as it now reads:

> The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

The British would have here made the word "State" "Member of the League." The French insisted that the word should be "Etat" in the French text and accordingly "State" in the English. It is at least arguable that "each State" means here each State of the world and accordingly might have a considerably broader signification territorially than "each Member of the League." [1]

The decision of the French Delegation was formally stated on the evening of April 26 and the British were obliged to yield to the insistence of the French; this agreement was finally reached on Sunday, April 27, when I was informed that the British would waive the amendments in question if the French insisted; and I then agreed accordingly with M. de Sillac for the French. So the second paragraph of Article 8 remained as above quoted and "covenant-breaking State" was retained as the language of Article 16.

So the English text was again reprinted with these changes, so to speak, changed back, and this text thus printed that night was the text submitted to and passed on by the Plenary Session of the Peace Conference of the following day, Monday, April 28. This text formed part of the English Report of the Commission (Document 32); in that Document the Covenant text is omitted, as it differs from the previous print (Document 31) in very few respects; aside from the trifles mentioned at page 481, these were only the British proposals regarding the substitution of "Members of the League" for "States" etc., so far as Wilson and the French had assented to them. Specifically, these were those listed above [2] as first proposed by Cecil (except as to Article 16), *plus* a corresponding change in the fifth paragraph of Article 8. In Document 31 will be found indicated the text of the Covenant in the Report of the Commission, by means of notes to the various Articles which had been in any way changed (Articles 4, 5, 8, 15

[1] Indeed, at one stage, the French for "State" here had been agreed on as "pays." See Document 37.

[2] See p. 478 *sq.*

and 26). Textually, these changes are all also in the final Treaty text (Document 34).

The fundamental idea of the British proposals was of course to make the Dominions specifically and beyond doubt eligible as Members of the Council of the League. What is to be said as to the policy in this matter from the American point of view? Mr. Wilson, as I have told, yielded to the British wish and as was his habit when he agreed, he agreed whole-heartedly, for later on he signed this famous Memorandum for Sir Robert Borden:

NOTES OF A MEETING HELD AT PRESIDENT WILSON'S HOUSE, MAY 6, 1919

The question having been raised as to the meaning of Article IV of the League of Nations Covenant, we have been requested by Sir Robert Borden to state whether we concur in his view, that upon the true construction of the first and second paragraphs of the Article, representatives of the self-governing Dominions of the British Empire may be selected or named as members of the Council. We have no hesitation in expressing our entire concurrence in this view. If there were any doubt it would be entirely removed by the fact that the Articles of the Covenant are not subject to a narrow or technical construction.

Dated at the Quai d'Orsay, Paris, the sixth day of May, 1919.

G. CLEMENCEAU
WOODROW WILSON
D. LLOYD GEORGE

Let me first consider the legal situation of the Dominions from an international point of view at this time (1919). Technically, there was not much doubt in the matter; the Dominions were simply parts of the British Empire and any international question that came up involving Canada or Australia or the others was strictly a question between London and the other Foreign Office, Washington or whatever one it might be. But the practical situation was slipping away from the legal status. True it was that any question along the Canadian frontier was a question between London and Washington; but we knew, and London knew that we knew, and so on with all the possible permutations of this progression, that the matter could not be settled except in accordance with the wishes of the Ottawa Government. The North West Frontier Commission with Lord Alverstone voting against Canada, had become impossible of repeti-

tion in 1919. Furthermore, the Dominions had had their separate armies in the War, and very separate armies they were too.[1]

As a direct result of all this, and even more important from the present point of view, the Dominions had their separate representation at the Peace Conference. Obviously a changing situation was visible. What its outcome would be, no one knew. The outcome within the British Empire was perhaps in theory the business of no outsider; but any change in the structure of the British Empire inevitably must have its repercussions internationally. Indeed from the point of view of reality, such repercussions actually had arrived. Canadian sentiment was a thing to be considered by itself, perhaps because it agreed with British sentiment and perhaps because it did not. It is to be remembered incidentally that the Irish Question at this time was not settled. If W. M. Hughes could say, as he did at a meeting of the Council of Ten, that the next time Britain went to war Australia would go or not as she saw fit,[2] certainly this remark gave cause for thought to statesmen of other countries. The effect of such an attitude is not limited to the relations between London and Melbourne.[3]

From an American point of view this development, which in its essentials is the gradual growth of a distinctive Dominion nationality, seems to me a wholly favorable one.

Grave differences of opinion between the United States and the British Empire internationally seem about as improbable as anything in the future can seem; the policy of both countries is primarily one of friendship for each other; but in the unlikely event that serious differences should arise, Dominion sentiment would in the last analysis almost certainly compose them. Some of the larger World questions are questions also within the British Empire and on these the opinion of Canada and of Australia is substantially that of the United States.

So when the League of Nations came to be framed the British Dominions were inevitably separate Members of the League. This was perfectly illogical from the point of view of legal precedent, just as it was perfectly inevitable from the point of view

[1] I do not use the word "armies" as meaning armies in the field; I mean armies in the strict sense of organisations with separate commands, separate discipline, separate pay and separate staffs. British and French troops fought together in the same army in the field; so did British and American troops, so did French and American troops; but the Dominion commands were almost as distinct from the British command as from the French command.

[2] I suppose the remark was edited out of the minutes.

[3] Now, of course, one should write Canberra.

of common sense. This latter point of view was certainly the one to be accepted here and elsewhere in connection with the League, rather than any reasoning of subtle casuists unable to visualize any international status which had not already been described in law books. The League of Nations was a new institution and necessarily had to disregard various preconceived ideas or at least go outside of them. The true point of view in such a matter is that of Salisbury, when he assented to the Anglo-Egyptian settlement about the Soudan and "joyfully agreed to the creation of a hybrid state of a nature eminently calculated to shock the susceptibilities of international jurists." [1]

Certainly the situation of the Dominions in the League of Nations is novel enough to please the most ardent foe of precedent. The British Empire is a Member of the League and so are Canada and the others. Is that part of the British Empire which is Canada a part of that Member of the League which is the British Empire; or is that British Empire which is a Member of the League the British Empire minus Canada *et al?* The questions which might be suggested by one of the subtle casuists are innumerable. The Covenant talks about disputes between Members of the League. Could there be a dispute between the British Empire and Canada, or between Canada and Ireland, or between Ireland and Italy? We do know that British Dominions may vote and have voted in the Assembly contrary to the vote of what I will call for clearness the London Government. We do know that the arrangement which made Ireland a Free State was called a Treaty and that the Irish registered it at Geneva and that the British Empire, or at least London, protested, the matter going no farther. Suppose the British North America Act were amended so as to give the Canadians greater autonomy than they have now, as is indeed suggested, would the Canadians register this at Geneva as a treaty amendment? Clearly the Irish could under their theory, for the Irish Treaty provides that the Free State shall have the rights of the Dominion of Canada and any increase in the Dominion rights is in effect an amendment to the Irish Treaty.

One might go on indefinitely with these unprofitable speculations and queries. The fact is that the situation of the British Empire is more or less in flux with a tendency towards a gradual increase in the looseness of the relations between London and

[1] Cromer's Introduction to Sir Sidney Low's *Egypt in Transition*, p. xiii.

the Dominion Capitals.[1] Perhaps finally the Crown will be the only link; we have already seen that a great political treaty of vital importance to London, the Treaty of Locarno, does not bind Canada and the others, not even India.

From the point of view of the American debates in 1919 and 1920 about the League of Nations, of course the "six votes" (now seven) was an effective slogan. No idea more fantastic or more dishonest could be imagined than that which was behind the slogan, namely, that the six votes were or could be controlled by London; and of course every student of the Covenant who examines the matter with an open mind realises that the votes mean nothing, as unanimity, with trifling and unimportant exceptions, is always requisite in the Assembly and in the Council as well. And from the point of view of American policy the formal recognition of the fact that the international attitude of the British people as a whole is not controlled solely by London is all to the good; whatever the result of this may be within the British Empire is for the future. From the broader view of World politics, Mr. Wilson's decision to yield to the views of the Dominions was a sound one. There were probably some among the British who regretted it, as there were some who regretted the membership of the Dominions in the League because they feared and could not wholly foresee the ultimate changes within the British Empire to arise from or to follow that development.

I have discussed the Dominions; but besides the Dominions there was India, not very often mentioned. Very early in the meetings of the Commission it had been agreed that India should be a Member of the League. Mr. Wilson had acquiesced and no one else seemed to care.

Now, Canada in all the essentials is a self-governing country; but no one by any stretch of language could say this of India then, or even now. The answer was of course that India contains three hundred million people and to say that those people should have no representatives of their own in the League of Nations would be carrying the logic of governmental representation very far. The Government of India is indeed even in London a separate Government. Under the curious British system, the Secretary of State for India and the Viceroy feel, if I may put it so, an Indian responsibility and not merely a British responsibility as to India; but even so, from the point of view of the theorist, the

[1] This was written before the Imperial Conference of 1926.

membership of India in the League is an anomaly among anomalies. Particularly is this true when one considers for a little what this land that we call India is. We commonly think and speak of India as a unit; but the most casual student must recognize that it is a unit composed of a good many separate parts of varying kinds. I do not refer so much to the bewildering variety of languages and races and religions as to the Native States which are a third of India and which legally speaking have, some of them, far more independence than a Canadian Province, despotisms tempered by a British Resident. We have become familiar with the thought of an *Imperium in Imperio* but these are rather *Imperia* in a Dependency.

In the Annex to the Covenant the British Dominions and India appear in the list of the original Members of the League, out of their alphabetical order, under the British Empire, the Dominions being named according to their political rank, with Canada first and New Zealand last, and India following. The names of the five countries are slightly indented in the print; the legal difference between the Dominions and India and the States which are Members of the League is thus symbolically indicated by a quarter of an inch of difference in type alignment.

The resolution which the Plenary Session of the Peace Conference adopted on April 28 regarding the Covenant was as follows:

> The Conference, having considered and adopted the amended Covenant presented by the Commission on the League of Nations, resolves:
>
> 1. That the first Secretary General of the League shall be Honorable Sir James Eric Drummond, K.C.M.G., C.B.
>
> 2. That until such time as the Assembly shall have selected the first four Members of the League to be represented on the Council in accordance with Article IV of the Covenant, Representatives of Belgium, Brazil, Greece, and Spain shall be members of the Council.
>
> 3. That the Powers to be represented on the Council of the League of Nations are requested to name representatives who shall form a Committee of nine to prepare plans for the organization of the League and for the establishment of the Seat of the League, and to make arrangements and to prepare the agenda for the first meeting of the Assembly. This Committee shall report both to the Council and to the Assembly of the League.

It will be seen that this resolution filled up the two blanks in the Covenant,[1] one in Article 4 by inserting the names of Belgium, Brazil, Spain and Greece (the French alphabetical order being used) and the other in the Annex, appointing Sir Eric Drummond as the first Secretary General.

So far as the resolution relates to the Organization Committee, it had, on account of the above mentioned [2] discussions with the French, been modified so as to make the Committee consist of the same Powers as those to be on the Council. The original British draft of the resolution was sent to me in a letter of Philip Baker of April 22; it was the same as that adopted at the Plenary Session of the Conference and quoted above, except that it omitted the name of Sir Eric Drummond and that in its final paragraph it followed the resolution passed [3] by the Commission on the League of Nations at its last meeting, its opening words being:

> That the President of the United States of America be requested to invite seven Powers, including two neutral Powers, to name representatives who shall form a Committee to prepare plans, etc.

The French had suggested having eleven Powers on the Committee instead of seven and Cecil's view was a compromise, the nine Powers on the Council. When Cecil told me this on April 26, he also asked me to take up with Colonel House the question of having the Council of Four agree to a resolution providing for the appointment of the Committee, also naming Sir Eric Drummond as the first Secretary General, and naming the four States, Belgium, Brazil, Greece and Spain to be represented on the Council. Accordingly I recast the British draft as to its last paragraph and inserted the name of Sir Eric Drummond, so that it read precisely as the Plenary Session adopted it; and I handed this to House who said that he would submit it to Wilson so that it would be adopted by the Council of Four on the morning of April 28.

I also gave a copy of the resolution to Wiseman who said that he would take it up with Lloyd George.

In connection with the Plenary Session of April 28, there was some fear that the Belgian claim for Brussels as the Seat

[1] For the text reported to the Plenary Session of the Peace Conference, see Document 31.
[2] See p. 484 *sqq.*
[3] See p. 467 *sq.*

of the League might be raised. In Philip Baker's letter of April 22 to which I have alluded, he wrote on this matter as follows:

> A rumor has come to us that the Belgian Delegation intend to force a vote in the Plenary Conference on the question of whether the Seat of the League ought to be placed at Brussels or Geneva, and that they are canvassing in favour of Brussels. This may become serious, especially if the French Government intend to embarrass the Powers who are most in favour of the League. Lord Robert asks me to suggest to you that it may be worth your while to call the attention of Colonel House to this matter, and to ask him whether he thinks that M. Hymans should be approached about the matter before the Plenary Conference, and whether some canvassing of the other Powers in favour of Geneva might be worth while. Since it is proposed that Belgium shall be one of the first four members of the Executive Council, and that she shall also be represented on the Organization Committee, it seems to me unreasonable of her to be so insistent about Brussels.

Nothing came of this however; very likely Cecil saw Hymans about the matter as House suggested to Wiseman; at any rate there was not a ripple about it at the Plenary Session for Hymans there accepted Geneva as the Seat of the League.

I print as Document 33 (using some of the French version) that portion of the Protocol of the Plenary Session of the Peace Conference on April 28 which relates to the League of Nations.[1] The Meeting had also some Labor clauses on its agenda. So far as the Covenant was concerned, everything went very smoothly. The President made a speech explaining the differences between the text of February 14 and the text now reported, reading it to a considerable extent from a memorandum which I had prepared at his request that morning, which was as follows:

> 1. The arrangement of the articles has been somewhat changed so as to group together the various provisions relating to general subjects.
>
> 2. The "Body of Delegates" is now called the "Assembly."
>
> 3. The "Executive Council" is now called the "Council."
>
> 4. The first paragraph of Article 1 is new. In view of the insertion of the Covenant in the Peace Treaty, specific provision as to the signatories of the Treaty which would become Members of the League and also as to the neutral States to be invited to accede to the Covenant were necessary.

[1] Somewhat condensed.

The paragraph also provides for the method of accession by the neutral States.

5. The third paragraph of Article I is new and provides for withdrawal by any Member of the League on two years' notice.

6. The second paragraph of Article IV is new, providing for a possible increase in the Council.

7. The last paragraph of Article IV is new, providing specifically for the one vote for each Member of the League in the Council, which was understood before, and providing also for one representative of each Member of the League.

8. The first paragraph of Article V is new, incorporating expressly the provision as to unanimity in voting.

9. In the second paragraph of Article VI has been added a provision that a majority of the Assembly must approve the appointment of the Secretary General.

10. The first paragraph of Article VII names Geneva as the Seat of the League and is followed by the second paragraph which gives the Council power to establish the Seat of the League elsewhere.

11. The third paragraph of Article VII is new, establishing equality of employment of men and women.

12. The second paragraph of Article XIII is new, giving instances of disputes which are generally suitable for submission to arbitration.

13. To Article XIV, regarding the establishment of a Permanent Court of International Justice, has been added to a clause giving that Court power to give advisory opinions upon questions referred to it by the Council or by the Assembly.

14. The eighth paragraph of Article XV is new. This is the amendment regarding domestic jurisdiction.

15. Generally speaking, the provisions regarding the settlement of disputes are unchanged in substance, although there has been some change in the arrangement and in the language; and the provisions in Article XV regarding publicity are somewhat more explicit.

16. The last paragraph of Article XVI, providing for expulsion from the League, is new.

17. Article XXI, the Monroe Doctrine amendment, is new.

18. In the second paragraph of Article XXII are inserted the words, "and who are willing to accept it," in order to make clear that the acceptance of mandates is voluntary.

19. Article XXIII is a combination of former Articles XVIII, XX and XXI of the old draft, with some changes of language, and also contains the following conditions:

Clause (b), providing for the just treatment of aborigines.

Clause (c), looking toward the prevention of the white slave traffic and the traffic in opium.

Clause (f), looking toward progress in international prevention and control of disease.

20. Article XXIV is Article XXII of the former text, and the second and third paragraphs have been added to extend the functions of the League in aiding international co-operation.

21. Article XXV is the Red Cross amendment and is new.

22. Article XXVI now permits amendment by a majority of the States composing the Assembly instead of three-fourths thereof without changing the requirement of adoption by the States on the Council.

23. The second paragraph of Article XXVI is new and was added at the request of the Brazilian Delegation in order to avoid constitutional difficulties in certain cases. It permits any Member of the League to dissent from an amendment, the effect of such dissent being a withdrawal from the League.

24. The Annex is added, giving the names of the Signatories of the Treaty who will become Members, and the names of the States invited to accede to the Covenant.

Baron Makino spoke for the Japanese, but did not press their equality proposal, leaving it to the future. Bourgeois presented and urged the French amendments to Articles 8 and 9, but when Pichon spoke later on he did not insist on them; and Pichon's suggestion of an invitation to Monaco to join the League was peremptorily brushed aside by Clemenceau himself. When Pichon brought forward the proposal, Clemenceau seemed surprised. Pichon turned and said deferentially: "I only make the proposal if nobody objects." Clemenceau rather brutally answered "You know that everybody objects." This appears in the Protocol as "un échange de vues entre M. Pichon et le Président."

Various other speeches were made. The delegate from Honduras spoke in Spanish about the Monroe Doctrine. No translation was made at the time, and it is very doubtful if any considerable percentage of the gathering understood him. The Honduran proposal, however, and an accompanying exposé, had been circulated in a French version which is substantially the same as in the Protocol (see Document 33).

At this Plenary Session of April 28 one amendment to the text of the Covenant was adopted. This was on the proposal of President Wilson and made the first paragraph of Article 5 read as follows:

> Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

The amendment inserted the words "or by the terms of the present Treaty." [1] The change was necessary, for the Treaty of Versailles provides in certain cases that the Council may act by a majority vote [2] as, for example, in all matters dealt with in the Annex to the Saar Basin clauses. The subsequent incorporation of the Covenant in three other Treaties of Peace in precisely the same language made the expression technically inaccurate; the stated exceptions when the Council may act by a majority are not in one treaty of peace but in four.

The Covenant was now ready for insertion in the Treaty of Versailles, the text of which as a whole was arranged, assembled and coordinated by the General Drafting Committee [3] of the Peace Conference, composed of Mr. Hurst, Dr. James Brown Scott, M. Fromageot, Signor Busatti and Mr. Nagaoka.

The first form of the Treaty of Versailles as an entirety was the Draft Treaty which was presented to the German Delegation at Versailles on May 7; this document was called "Conditions of Peace." It is well known that as a result of the written negotiations carried on between Germany, on the one hand, and the Allied and Associated Powers, on the other, various modifications, some of them of much importance, were made in the terms imposed on Germany, prior to the signature of the Treaty of Versailles on June 28. The Covenant of the League of Nations, however, which became Part I of the Treaty, had reached almost literally its final form; but for the sake of completeness the triv-

[1] As Wilson proposed the amendment, it read: "or by the terms of this Treaty," but I have quoted the final text. In the French account it reads "ou du présent Traité" which became "ou des clauses du présent Traité."

[2] See "The League of Nations and Unanimity," by Sir John Fischer Williams, in *A.J.I.L.*, Vol. 19, p. 475.

[3] The work of this Drafting Committee was a good deal more extensive and important than can here be set forth. The Commission on the League of Nations reported directly to the Peace Conference in Plenary Session; but generally the various Commissions and Committees were instructed to submit with their Reports detailed Treaty clauses to be passed on by the Council of Four; those clauses usually required more or less redrafting, even when the Council of Four did not change them by directions of one sort or another, which they frequently did. Furthermore, there were important clauses of the Treaty which did not originate with any Commission or Committee; but it is outside the scope of this work to speak of the drafting of the Treaty generally and of the work of the Drafting Committee in that connection.

ial changes that were made up to the signature of the Treaty are to be mentioned.

As adopted by the Plenary Session of April 28, the Covenant in the first paragraph of Article 4 read as follows:

> The Council shall consist of Representatives of the United States of America, of the British Empire, of France, of Italy and of Japan, together with, etc.

By the specific direction of the Council of Three,[1] given sometime before May 5, this language was changed by the Drafting Committee [2] so as to read:

> The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with, etc.

The idea was that perhaps Italy, whose delegates were then absent, would not sign the Treaty, in view of the differences about Fiume and other matters, and that if so, Italy should not be specifically named as a Member of the Council of the League. The use of the expression "the Principal Allied and Associated Powers" requires reference to the opening words of the Treaty of Versailles which define the expression as meaning the five Powers named. It was thought, however, that if Italy did not sign the Treaty, the definition in the opening words could be changed so as to omit Italy and define the expression as including simply the four other Powers. So far had this idea been carried at one stage of the Treaty proof, as I shall tell more in detail below, that the name of Italy in the Annex to the Covenant had been taken out of the list of Signatory Powers and put among the names of the States invited to accede to the Covenant.

So the text of the Covenant in the Treaty uses the expression "the Principal Allied and Associated Powers" in Article 4.

This seems to me to be a real blemish from two points of view; technically, because it requires an examination of the language of the Treaty of Peace, outside of the Covenant itself, to determine what States are named in Article 4 as permanent Members of the Council; from a larger point of view, it is unfortunate that a document intended as a permanent charter of peace should contain an expression which is essentially temporary and of his-

[1] Wilson, Lloyd George and Clemenceau.
[2] Meaning here and hereafter the general Drafting Committee of the Peace Conference, above mentioned.

torical interest only, relating to the later phases of the World War and its conclusion.

The only other changes in the English text made before the "Conditions of Peace," doubtless by the Drafting Committee, were as follows:

1. In the Preamble, "The High Contracting Parties" became the opening words, so as to agree with the French version.

2. In Article 6, third paragraph, the word "the" before "staff" was stricken out.

3. In Article 15, first paragraph, the words "in accordance with Article 13" were substituted for the words "as above".

4. In Article 22, paragraph 5, "conscience and religion" instead of "conscience or religion".

The Annex also differs in some trifles: it is headed simply "Annex" instead of "Annex to the Covenant"; and in the list of States Czecho-Slovakia appears after Siam in the French alphabetical order and not after Cuba; and "Serbia" is corrected [1] to Serb-Croat-Slovene State.

One incident in connection with the Covenant text occurred just before the "Conditions of Peace" were presented to the Germans on May 7; it seems worth telling, though no change in the language of the Covenant resulted.

The first meeting of the Organization Committee mentioned in the resolution of the Plenary Session of April 28 was held on May 5, 1919. The decision to hold this meeting was reached at a luncheon at Colonel House's on April 30. Cecil there drew up this letter for President Wilson to send out to the nine Powers [2] named for the Council:

Sir:

The Plenary Conference of the 27 inst. under the presidency of M. Clemenceau decided that a Committee of Nine should be appointed to prepare plans for the organization of the League of Nations and for other purposes. I am to request that your Government as one of the Powers designated to be represented on the Committee will be good enough to nominate a member of the Committee. The first meeting of the Committee will be held at the Hotel Crillon on Monday the fifth of May at 3 o'clock.

There was some discussion at the luncheon as to what should be done at the meeting of the Organization Committee and in the

[1] This correction was made *after* the printing of the Conditions of Peace.
[2] United States, British Empire, France, Italy, Japan, Belgium, Brazil, Spain and Greece.

interval various proposals were drawn up by Sir Eric Drummond and others. As a result of these came the resolution which the Committee passed at its meeting of May 5 at the Hotel de Crillon, M. Pichon presiding:

1. That the Acting Secretary General be instructed to prepare plans of organization of the League and submit them to the Committee.

2. That a credit of £100,000 shall be opened immediately on the joint and several guarantee of such of the States represented on the Committee, subject to any approval necessary by law.

2. (b) That the Acting Secretary General or such persons as he may designate in writing shall be entitled to draw on this credit.

3. That the Acting Secretary General be authorized to engage a temporary staff and offices and incur such other expenditures as he considers necessary for carrying out the instructions of the Committee.

4. That the Acting Secretary General's salary shall be at the rate of £4,000 a year, with an allowance for *frais de représentation* of £6,000 a year. A house shall be provided for the Secretary General at the permanent Seat of the League.

5. That the meeting be adjourned *sine die,* the Acting Secretary General being instructed to call the next meeting at such time and place as he shall think most suitable, having regard to the business to be done and the convenience of the members of the Committee.

The meeting was a very brief one and I do not even have a list of all of those present representing the nine Powers. My Diary says that Viscount Chinda was there for Japan as Baron Makino was ill; House and Cecil represented the United States and the British. Sir Eric Drummond was present as Acting Secretary General.

After this meeting was over and there were only a few of us in the room, including House, Cecil and Philip Baker, President Wilson came in. He said that he was very much disturbed about an addition which had been made in Article 22 of the Covenant. He said that he had been told of this by Hankey and that the addition had been made by direction of Clemenceau. Mr. Wilson said he had told Clemenceau that nobody could give such a direction, not even the Council of Three. The President then suggested that I should go over and examine the Treaty text and see whether there were any other changes. I told him that I would examine both the English and French texts and re-

port to him. With Philip Baker I went over to the Quai d'Orsay and got the French and the English texts from Hurst. They were printed as the fifth proof of the Treaty text and dated the same day, May 5. We returned to my office where these texts were read very carefully; the comparison that was made was with the texts as reported by the Commission on the League of Nations.[1]

The change in the text which President Wilson had mentioned in his conversation was the insertion of the words "and of the territory of the mother country" in the fifth paragraph of Article 22 (the Mandates Article); "defense of territory" had also become "defense of the territory"; so that that paragraph of Article 22 read as follows in the proof (the added words in italics):

> Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of *the* territory *and of the territory of the mother country,* and will also secure equal opportunities for the trade and commerce of other Members of the League.

I at once made and sent up to the President this memorandum of the various changes, and also told Colonel House about them; House was very much disturbed by the change in the position of the name of Italy in the Annex:

> The English and French texts of the Covenant in the Treaty (fifth proof) have been carefully compared with the texts as reported by the Commission.
>
> The amendment to Article v adopted by the Conference has been made.
>
> There is a change in language in Article iv, of which you are aware, namely, the substitution of "Principal Allied and Associated Powers" for the names of the Five Great Powers.
>
> The name of Italy has been taken from the list of signatories in the Annex and placed in the list of invited States.[2]
>
> The change which you mentioned in Article xxii, fifth paragraph, by the addition of the words, "and of the territory of the mother country" appears in the Treaty text.

[1] For the English see Document 31; and for the French see Document 40.
[2] After Denmark.

Otherwise, there are no differences except a few of a trifling nature, such as punctuation and corrections.

The minor differences in the English Treaty proof were very carefully noted but I need not list them here. Some of them were the changes mentioned above [1] as having been made by the Drafting Committee; others were printer's errors; none of them was of importance.

The differences in the French proof, aside from a few trifles and printer's errors, were similar to those in the English. The words added in the fifth paragraph of Article 22 were in the French "et du territoire métropolitain"; and the position of the name of Italy had been changed also in the Annex so that "Italie" came after "Espagne."

In the evening President Wilson called me on the telephone. He said that he had read my memorandum and that he strenuously objected to the words added in Article 22 going in. I spoke to him about the changed position in the Annex as to the name of Italy and told him that the Italians would object very much to that and explained to him just what the effect was. He then said he would like that corrected but he was insistent that the other words should not remain in the Mandates Article and told me to take the matter up with Dr. Scott, our representative on the Drafting Committee. I went over to the Quai d'Orsay and saw Dr. Scott and told him the objection of the President to the language in Article 22, which Dr. Scott said would be altered. I also told him about the change in the position of the name of Italy and Dr. Scott said that would be rectified also.

I went back to Colonel House and told him about what had happened. He was very much pleased and said it was the best hour's work that had been done. While I was with him he telephoned the President and told him about it and repeated to me that the President was very much relieved.

As Dr. Scott had said, the print in these matters was brought back to its former condition as reported by the Commission on the League of Nations both in Article 22 and in the Annex as to the position of Italy. This must have been done immediately; because the "Conditions of Peace," the printed document presented to the Germans on May 7, had been considered by a Plenary Session of the Peace Conference on May 6; and the English text of the Covenant in the "Conditions of Peace" was (aside

[1] See p. 500.

from printer's errors which were corrected) literally and strictly accurate and the same text as that of the Treaty of Versailles with the exception merely of the insertion of the word "air," so that in Articles 1, 8 and 9, "military and naval" became "military, naval and air" and similarly in Article 16 "military or naval" became "military, naval or air."

I may mention here that in the Treaty the Article numbers of the Covenant are all printed in Arabic figures and Roman numbers are used only in the Annex. I do not know why Americans are so fond of the Roman; but we are. Every American draft printed at Paris always used Roman numbers throughout. So did Mr. Wilson's first draft which he typed in America. The French in their prints always used the Arabic and in the Treaties of Peace that style is happily adopted throughout. However, we have here, I suppose, more often thought of Article X than of Article 10.

In one matter of spelling, the Drafting Committee over-ruled me, by adopting "Mandatory" throughout Article 22. The word is there used as a noun and my preference was for the alternate spelling "Mandatary"; and all the prints of the English text made under my direction had used this spelling. I think that the Treaty of Versailles has now settled the usage in favor of the "o." While "mandatory" as an adjective was of frequent use, the word was uncommon as a noun before 1919 in ordinary writing and the choice was then perhaps one of fancy.

This is the end of my story of the English text of the Covenant of the League of Nations as it appears in the Treaty of Versailles. That text with the corresponding French text, the literal print[1] of the Treaty, will be found as Document 34. I use the word "literal" advisedly, for many printed copies of the Covenant are not strictly accurate.

[1] In Document 34, for convenience, I have numbered the paragraphs pursuant to the Assembly Resolution of September 21, 1926; but amendments to the Covenant made or proposed since the Treaty of Versailles came into force are not within the scope of this work.

CHAPTER XXXV

THE FRENCH TEXT

The Treaty of Versailles provides that its "French and English texts are both authentic" ("les textes français et anglais feront foi").

The formal decision that "the Peace Treaty should be printed in French and English languages, which should be the official languages of the Treaty" was made on April 25 by the Council of Four. Much as the French wished otherwise, the British and American participation in the War and in its settlement and the presence of President Wilson in Paris made it inevitable that the English language should be an official language of the Treaty of Peace. Naturally the decision was one which the French greatly regretted not only in itself but also because the writing of the Treaty of Versailles in French and in English of equal validity made those two languages the official languages of the League of Nations and also the official languages of the Permanent Court of International Justice, and perhaps to some extent marked the passing of French as the chief medium of diplomatic intercourse.

This is not the place to discuss the language of the proceedings of the Conference of Paris generally and of its Commissions and Committees, of the Council of Ten and the Council of Four and the rest, and of those innumerable official and quasi official meetings of small groups which had so much to do with some of the results.[1]

Almost all the diplomats present from countries other than Great Britain, the United States and Japan, spoke and understood French. Some of these used English fluently, Clemenceau for example; some, like Orlando, knew but little English; on the whole, familiarity with our language on the part of the diplomats generally was not as common as might have been expected. Most members of the Japanese Delegation knew French, but they almost invariably used English. In the British Delegation there were representatives who were perfectly at home in French like Sir

[1] See *A History of the Peace Conference of Paris,* edited by H. W. V. Temperley, vol. i, p. 253 *sq.,* and also Baker, *op. cit.,* vol. i, chap. xii.

Eyre Crowe and this was true of some of the American representatives like Professor Charles H. Haskins; but neither Lloyd George nor Wilson nor House spoke French and none of them could even read it except in a very limited way. So interpreters were often necessary; sometimes the discussions were bilingual, those who spoke in one language understanding the other; and occasionally French, very seldom English, was used alone.

I have pointed out earlier [1] that the Commission on the League of Nations from the beginning worked essentially on an English text. During the first eight meetings of the Commission prior to February 13, the crude, hasty and imperfect French translations of the English texts which were laid before the Commission from time to time had little official significance; they could not be regarded as having any greater dignity than Secretariat memorandums.

Accordingly the first French text of the Covenant which requires mention is one to which allusion has already been made, namely, the French text which was laid before the Plenary Session of February 14 as the equivalent of the Covenant English text of that date. This French text [2] was doubtless prepared by the French Foreign Office (by which it was printed) in conjunction with the French members of the Secretariat of the Commission on the League of Nations. To a considerable extent it used and adapted the previous Secretariat translations of the English; but to a considerable extent also it disregarded those and went on its own.

By the proceedings subsequent to February 14 the English text of that date was so recast and revised that this French text of February 14 is of little comparative value. But any one who examines the matter in detail will see that even where the English remained with little change the French was usually recast.

I will give one instance of this. In the English text of February 14 the first paragraph of Article 4 read as follows:

> All matters of procedure at meetings of the Body of Delegates or the Executive Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Body of Delegates or the Executive Council, and may be decided by a majority of the States represented at the meeting.

[1] See p. 128.

[2] It will be found in Document 20, as Annex 11 to the minutes of the Tenth Meeting. See p. 270.

This language remained almost unchanged in the final text of the Covenant as the second paragraph of Article 5, reading this way:

> All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

Now compare the corresponding French texts. In the French text of February 14 the language was this:

> Toutes questions concernant la procédure à suivre par l'Assemblée des Délégués ou le Conseil exécutif dans leurs sessions, y compris la constitution des Commissions chargées d'enquêter sur des cas particuliers, seront décidées par l'Assemblée ou le Conseil à la majorité des Etats représentés à la réunion.

In the Treaty of Versailles it reads thus:

> Toutes questions de procédure qui se posent aux réunions de l'Assemblée ou du Conseil, y compris la désignation des Commissions chargées d'enquêter sur des points particuliers, sont réglées par l'Assemblée ou par le Conseil et décidées à la majorité des Membres de la Société représentés à la réunion.

There used to be a saying, "There is an exception to every rule including this one"; so there is one exception to all that I have said about the early French text; this is in regard to the Mandates Article, numbered 22 now and 19 in the February 14 draft.

The origin of the language of this Article was outside the Commission on the League of Nations; it was the resolution [1] passed by the Council of Ten on January 30 before the Commission had met. I have told the story of this resolution in some detail in Chapter IX. Omitting the first two paragraphs of the January 30 resolution, the Mandates Article of the Covenant embodies almost literally the rest of the resolution (subject to the drafting changes necessary because of the different character of the document) with the addition of a few words making it clear that the acceptance of a Mandate is per-

[1] For the text, see p. 109 *sq.*

missive and of a phrase regarding freedom of conscience and religion. Then follow in the Mandates Article, two paragraphs regarding the drawing up of the Mandates and the Permanent Mandates Commission.

Now the resolution of January 30 regarding Mandates had General Smuts as its author or proponent. It was written in English, discussed at a meeting of the British Delegation on January 29 and presented in English by Lloyd George at the meeting of the Council of Ten on January 30 and in English it was adopted. However, either at the time or later there was as a part of the records of the Council of Ten a French version of this resolution which was on file at the Quai d'Orsay and which I here print:

I.

Prenant en considération le passé de l'administration allemande et la menace que la possession par l'Allemagne de bases sous-marines dans un grand nombre de parties du monde ferait nécessairement courir à la liberté et à la sécurité de toutes les nations, les Puissances Alliées et Associées sont d'accord pour déclarer qu'en aucune circonstance aucune des colonies allemandes ne devra être restituée à l'Allemagne.

II.

Pour des raisons semblables et plus particulièrement à cause des mauvais procédés de gouvernement employés, de tous temps, par les Turcs à l'égard des peuples qui étaient sous leur domination, et des terribles massacres dont les Arméniens et autres peuples ont été victimes au cour des récentes années, les Puissances Alliées et Associées sont d'accord pour déclarer que l'Arménie, la Syrie,[1] la Mésopotamie, la Palestine et l'Arabie doivent être complètement séparées de l'Empire turc, cela sans préjudice du règlement à intervenir pour les autres parties de l'Empire turc.

III.

Les Puissances Alliées et Associées sont d'accord pour déclarer qu'il y aurait lieu de mettre à profit l'occasion offerte par la nécessité de disposer des colonies et territoires appartenant à l'Allemagne et à la Turquie, qui sont habités par des peuples encore incapables de se diriger eux-mêmes dans les conditions particulièrement difficiles du monde moderne, pour appliquer à ces territoires le principe que le bien-être et le développement de tels peuples forment une mission sacrée de civilisation, et qu'il conviendrait, en

[1] "le Kurdestan" is omitted here, by some error.

constituant la Ligue des Nations, d'y incorporer des gages pour l'accomplissement de cette mission.

IV.

Après une étude attentive, elles estiment que la meilleure méthode de réaliser pratiquement ce principe est de confier la tutelle de ces peuples aux nations développées qui, en raison de leurs ressources, de leur expérience ou de leur position géographique, sont le mieux à même d'assumer cette résponsibilité; elles exerceraient cette tutelle en qualité de mandataires et au nom de la Ligue des Nations.

V.

Les Puissances Alliées et Associées pensent que le caractère du mandat doit différer suivant le degré de développement du peuple, la situation géographique du territoire, ses conditions économiques et toutes autres circonstances analogues.

VI.

Elles considérent que certaines communautés qui appartenaient autrefois à l'Empire turc ont atteint un degré de développement tel que leur existence comme nations indépendantes peut être reconnue provisoirement, à la condition que les conseils et l'aide d'une Puissance mandataire guident leur administration jusqu'au moment où elles seront capables de se conduire seules.

Les vœux de ces communautés doivent être pris en première considération pour le choix de la Puissance mandataire.

VII.

Elles considèrent en outre que le degré de développement où se trouvent d'autres peuples, spécialement ceux de l'Afrique Centrale, exige que le mandataire y assume l'administration du territoire à des conditions qui garantiront, avec la prohibition d'abus tels que la traite des esclaves, le trafic des armes et celui de l'alcool, l'interdiction d'établir des fortifications ou des bases militaires ou navales, de donner aux indigènes une instruction militaire si ce n'est pour la police ou la défense du territoire, et qui assureront également aux autres membres de la Ligue des Nations des conditions d'égalité pour les échanges et le commerce.

VIII.

Elles considèrent enfin qu'il y a des territoires, tels que le Sud-Ouest Africain et certains îles du Sud Pacifique qui, par suite de la faible densité de leur population, de leur superficie restrainte, de leur éloignement des centres de civilisation, de contiguïté géo-

graphique à l'Etat mandataire, ou d'autres circonstances, ne sauraient être mieux administrés qu'en étant soumis aux lois de l'Etat mandataire comme partie intégrante de cet Etat, sous réserve des garanties prévues plus haut dans l'intérêt de la population indigène.

Dans tous les cas, l'Etat mandataire devra envoyer à la Ligue des Nations un rapport annuel concernant les territoires commis à sa charge.

Just as the original resolution was used as the basis of the English text of the Mandates Article, so this French version of that resolution was used as the basis of the French text of the Article. This was as true of the French draft of February 14 as it was of the final text.

The decision taken by the resolution of January 30 was a political decision agreed to by the five Great Powers and the text of this decision was officially recorded in English and in French. The Covenant became the appropriate part of the Treaty for the incorporation of this decision and so far as it was possible to use the words of the resolution in the Mandates Article they appear in Article 22.

I may say here that the French translation of the resolution of January 30 while quite literal is a very good equivalent of the English; in regard to one expression however, there is some basis for argument as to different meanings; "Le trafic de l'alcool" is not precisely accurate for "the liquor traffic."

The subsequent French texts which I shall mention must of course be considered in relation to the state of the corresponding English text at the time. For clarity, I summarize here part of the story told elsewhere in detail.

At the three meetings of the Commission on the League of Nations which were held in the latter part of March, the Covenant of February 14 had been gone over in detail and considerably altered. Some of the changes were adopted textually, others in principle. They included most of those agreed on at the meeting of March 18 between Wilson and Cecil. The textual and other changes were nearly all in English, but some of those proposed were in French. The English text, however, was the one under consideration. At the conclusion of those three meetings the whole text, with the proceedings and amendments of the Commission, was referred to a Drafting Committee whose powers, while nominally limited, were actually of a very broad character.[1]

[1] See p. 351 *sqq.* and Chapters XXV to XXVII.

In preparation for the work of that Drafting Committee, Hurst and I prepared an English text with which was printed a French translation; the English of this appears in this collection as Document 28. It is sufficient to say here of the French text that went with it that it was intended to lay before the members of the Drafting Committee a French equivalent of the English text which Hurst and I had written; it was prepared almost wholly in my office and purposely it was made in the form of a literal, and indeed quite slavish, following of the English; and accordingly its style, if I may put it so, was English, rather than French; so that French text may be said to have served the convenience of the Drafting Committee, but no more than that.

Now the result of the work of the three meetings of the Drafting Committee on April 1 and 2 as arranged by Hurst and myself, with the subsequent incorporation of the slight changes resulting from the discussion of the Red Cross amendment, was a new English text which went back to the Commission on the League of Nations for its consideration. That English text is Document 30 and some account of its preparation is elsewhere written.[1] I may repeat here that while the changes subsequent to that draft were in the aggregate of a fairly considerable number, still, almost all of its language is literally the language of the Covenant in the Treaty of Versailles.

The English text was the only text passed on by the Drafting Committee, as a Committee. The idea was that the French officials would prepare an equivalent French text; so in accordance with my understanding with Hurst, it was arranged with de Lapradelle on the afternoon of April 3 that copies of the English text of the Covenant from the Drafting Committee would be available the following morning. M. de Lapradelle had been present at all the meetings of the Drafting Committee. Accordingly copies of the English text were delivered on the morning of April 4 and specifically to M. Larnaude and M. Veniselos, as members of the Drafting Committee. The English text of course did not then include what I may call the Red Cross changes in Articles 22, 23 and 24 (as there numbered) which have been told about in detail,[2] but everyone concerned knew of these changes, when they were agreed to on April 5.

On April 7 M. de Sillac came to my office and left with me a copy of the French text as it had been drawn up. This French

[1] See Chapter XXIX.
[2] See p. 407 *sq.*

text is Document 36. It was of considerable significance; it was the first proposal of a definite French equivalent of the English. It received much consideration. Something should be said here as to its form and as to its substance.

As to form, the French text divided the Covenant into six chapters with chapter headings, substantially as suggested by M. Larnaude at the meeting of the Drafting Committee;[1] but that Committee, while adopting the arrangement generally, had not adopted the chapter headings as such or the division into chapters, as such. In one respect the French text changed the arrangement of the Articles, 10 becoming 8, and 8 and 9 becoming respectively 9 and 10.

In style, the French was very much superior to anything that had been written earlier; indeed in style as well as in language a very considerable part of this draft appears in the final French text. However, as an equivalent of the English text at the time (Document 30) this French draft was in many respects defective.

I compared the two in detail the day that I received the draft from M. de Sillac; and that evening Warrin and I spent two hours with Hurst going over the French text. The notes of discrepancies and of questions raised at this meeting were in substance reproduced a little later by the British as a memorandum entitled "Discrepancies between English and French texts of the Covenant," the comparison being between the French of Document 36 and the English of Document 30. This memorandum which follows was on the table at the Fourteenth Meeting of the Commission on the League of Nations (April 10):

PREAMBLE.		General Structure.
ARTICLE I.	Paragraph 1.	"Etats signataires." "without reservation" omitted. "Adhésion" for "accession."
ARTICLE III.	Paragraph 1.	"Délégués des Etats" for "Representatives of the Members."
	Paragraph 3.	"Etat" for "Member."
ARTICLE IV.	Paragraph 1.	"au moment" for "from time to time."
	Paragraph 2.	"temporairement" inserted.
	Paragraph 4.	"La compétence s'étend" for "may deal."

[1] See p. 402 *sq.*

	Paragraph 5.	Omits "as a member" and "specially."
ARTICLE V.	Paragraph 1.	"concernant" for "at meetings of."
	Paragraph 2.	Omits "at the meeting."
ARTICLE VI.	Paragraph 2.	"Choisi par l'Assemblée sur la proposition du Conseil."
	Last paragraph.	Omits "international."
ARTICLE VII.	Paragraph 4.	"Etats associées" for "members of the League."
	Last Paragraph.	"ses représentants" for "attending its meetings."
ARTICLE VIII.	English Article X.	transposed here.
		Omits "existing."
ARTICLE IX.	English Article VIII.	
	Paragraph 1.	Omits "national" after "armaments."
	Paragraphs 2 and 3.	Change of wording "En vue d'en assurer l'exécution."
	Paragraph 4.	"prendre des mesures" for "advise."
	Last paragraph.	"La plus franche et la plus complète."
		"Tous renseignements."
ARTICLE X.	English Article IX.	
ARTICLE XI.	Paragraph 1.	"Dans le présent ou l'avenir" for "immediately . . . or not."
		"Etats contractantes" for "Members of the League."
ARTICLE XII-A.	Omitted.	
ARTICLE XIII.	Paragraph 1.	"susceptible de" for "suitable for."
		"question" for "whole subject matter."
	Paragraph 2.	Fails to bring out that only examples are given.
ARTICLE XV.	Paragraph 3.	"explications des Parties" for "explanations regarding the dispute."
	Paragraph 5.	Omits "facts."
	Paragraph 9.	Omits "solely."
ARTICLE XVI.	Paragraph 1.	Inserts at end of first para. "et cesse d'être représenté dans tous les organes de la Société."

	Paragraph 2.	"Etats adhérents." Also in XVII.
	Paragraph 3.	"indiquer" for "recommend."
	Paragraph 5.	Inserts "sur la demande du Conseil" and "avec toutes les facilités possibles." Omits "which are co-operating to protect the Covenants of the League."
ARTICLE XVII.	Paragraph 1.	Omits case when neither State is Member of the League.
ARTICLE XVIII.		Omits "hereafter."
ARTICLE XIX.		"Obligations" for "conditions."
ARTICLE XXI.	Last paragraph.	"bureau" for "commission." "Par lui" inserted after "charge."
ARTICLE XXII.	(c) and (d)	"contrôle" for "supervision."
	(f)	"combattre" for "control."
ARTICLE XXIII.	Paragraph 1.	"autres" for "such international."
ARTICLE XXIV.		"santé publique."

One other comment should be made on this French text; it recast somewhat the French of the Mandates Article (then 21), thus departing from the French of the resolution [1] of January 30.

Hurst and I discussed somewhat the advisability of having a meeting of the Drafting Committee to consider the French text, but the time available before the Commission on the League of Nations was to meet was too limited for this to be possible; and in a talk with Cecil three days later and a few hours before the Fourteenth Meeting of the Commission on April 10 we agreed that if the French then brought up the matter of a French text the question would simply be referred to the general Drafting Committee of the Peace Conference.

However, events took another course, and, as I have shown,[2] at the Fifteenth Meeting of the Commission on April 11 Larnaude and I were appointed a Committee to prepare a French text. Earlier that day the matter had been incidentally mentioned by Hurst when we met for another purpose. Hurst said to me that M. Fromageot, who with Hurst was a member of the general Drafting Committee of the Conference, had been spoken to about making a French text of the Covenant. Fromageot had re-

[1] Quoted p. 508 *sqq.*
[2] See p. 439 *sqq.*

marked to Hurst about the Preamble in particular which he thought should be in a different form in French. In reply Hurst had said that the Preamble had been written by Wilson and that it would be best to make a very literal translation of it. I told Hurst that in my view his advice was wise, as usual.

I refer here again to the discussion regarding the French text which is recorded in the minutes of the Fourteenth Meeting of the Commission on the League of Nations (although, as I think, it took place at the Fifteenth Meeting).[1] That record shows beyond doubt that the English text at that stage was the only official text. Cecil, regretting that he could not accept the French text, said that "the work throughout had been carried out on the basis of the English text" and accordingly "the English text represented the views of the members of the Committee"; Wilson said "the English text was at present now the correct one"; and Cecil recalled the fact that "the French text had never even been presented to the Drafting Committee"; and Veniselos said that "if the two texts did not agree, the French text should be the one altered," which followed a previous remark of Orlando to the same effect.

It is necessary to point out here just what the situation was at this time, April 12. The Commission on the League of Nations had held its final meeting the night before and had adopted a definitive English text[2] which differed somewhat, notably by the addition of the Monroe Doctrine amendment, from the text from the Drafting Committee (Document 30). The latest, indeed the only, French text in existence (Document 36) was supposed to be the equivalent of the text from the Drafting Committee, but, as I have shown above, there were numerous discrepancies and, even aside from those, of course the later changes by the Commission had to be taken into account.

The aim of the French text Committee, of which Larnaude and I were the members, was expressed to me by Cecil in a message which he sent me this day, on his departure for London, thus: "The sole object should be to bring the French text into complete substantial accord with the English." Nothing could be more clear or correct than this in its statement that the English text at this time was authoritative and its French equivalent was yet to be finally written.

[1] See p. 439 *sqq.*

[2] See Document 31, which incorporates a few of the "Later Changes" as explained in the opening pages of Chapter XXXIV.

During the next two or three days Butler and Warrin and I devoted a good deal of time to the French text (Document 36), making notes on it. We had before us of course the British "Note of Discrepancies" which I have quoted [1] and also these "Observations de la Délégation Belge relatives au Texte du Comité de Rédaction" which, like the British, resulted from a comparison of the English of Document 30 with the French of Document 36:

OBSERVATION GENERALE.—Les textes français et anglais ne concordent pas absolument; nous signalons des différences. Peut-être en existe-t-il que nous n'avons pas remarquées. Il paraît nécessaire pour éviter des difficultés de réserver le caractère d'authenticité à l'un des textes.

PREAMBULE. Le text français comporte l'engagement général de ne pas recourir à la guerre. Or le Pacte n'interdit la guerre que dans des cas déterminés, c'est ce qu'exprime le préambule anglais qui parle d' "obligations not to resort to war."

Les auteurs du projet français ont ils eu en vue une obligation morale plus étendue que la promesse juridique? Il convient en ce cas de préciser et en tous cas d'accorder les deux textes.

ARTICLE 1. 1er alinéa: Le texte français est plus logique que le texte anglais qui considére comme membres de la Société les États *invités* sans mentionner la condition qu'ils aient accepté.

2e alinéa. Amendement: supprimer *de self-government complet;* intercaler après Colonie *"ayant des institutions représentatives."*

En disant tout Etat de "self-government" complet, Dominion ou Colonie, le texte français n'impose la condition de self-government qu'aux États; il semble même en faire une qualité distinctive des Etats par rapport aux Dominions ou Colonies. C'est l'indépendence absolue.

Le texte anglais vise au contraire en parlant de "self-governing" l'organisation démocratique de pouvoir, et fait de l'existence d'institutions représentatives une condition pour les Dominions ou Colonies aussi bien que pour les Etats.

ARTICLE 6. Amendement: remplacer *"assiste en cette qualité à toutes les séances"* par *"exerce les fonctions de secrétaire à toutes les sessions de l'Assemblée et du Conseil."* Le texte anglais est dans ce sens. Il ne paraît pas nécessaire que le Secrétaire général assiste à toutes les séances.

ARTICLE 8. Amendement: après *politique,* ajouter *"actuelle."*

Le texte anglais parle de "existing political indépendance," ce qui signifie sans doute l'indépendance politique actuelle de ses

[1] p. 512 *sqq.*

membres, telle qu'elle existe actuellement et non telle que ses membres pourraient un jour la souhaiter.

ARTICLE 9. 1er alinéa, amendement: remplacer: *"l'exécution par une action commune des obligations internationales"* par *"la nécessité de sanctionner par une action commune les obligations internationales,"* "exécution" n'est pas une traduction exacte de l'anglais "enforcement."

3o alinéa, amendement: remplacer la première proposition par *Ce plan doit faire l'objet d'un nouvel examen en vue de revision éventuelle, au moins tous les dix ans.* Ce texte est plus conforme au texte anglais.

4e alinéa, amendement: remplacer *articles* par *engins.*

ARTICLE 11. Amendement: remplacer *"de nature à affecter les relations internationales qui menacent de troubler, etc."* par *"affectant les relations internationales qui menace . . . ."* Le pluriel *menacent* est sans doute une faute d'impression.

ARTICLE 13. Deuxième alinéa, intercaler après *sont déclarés susceptibles* l'expression *généralement,* ou *en principe,* à moins que l'on ne consente à supprimer dans le texte anglais l'expression "generally" qui atténue beaucoup la portée de la déclaration.

ARTICLE 15. Sixième alinéa.

Le texte français rend exactement l'expression anglaise *if any,* mais cette rédaction ne paraît pas conforme à l'esprit des décisions de la Commission. Je propose que l'on substitue à la rédaction actuelle celle plus nette de l'article 13 f.f.

Si l'une des Parties ne s'y conforme pas, le Conseil propose les mesures qui doivent rendre les recommendations efficaces.

Même chose dans le texte anglais.

ARTICLE 16. Premier alinéa: f.f., les mots *"cesse d'être représenté dans tous les organes de la Société"* ne figurent pas dans le texte anglais; la proposition est intéressante, mérite d'être adoptée.

Troisième alinéa, remplacer *indiquer* par *proposer;* "indiquer" est une traduction inexacte de "recommend". La rédaction française donne au Conseil le droit de fixer souverainement l'importance des contingents, ce qui est contraire aux décisions de la Commission.

Cinquième alinéa, deuxième proposition; la rédaction française diffère de l'anglaise; elle mentionne la demande du Conseil qui ne figure pas dans le texte anglais et d'autre part ne précise pas qu'il s'agit de forces coopérant pour assurer le respect des engagements du Pacte.

The first meeting on the French text was on the afternoon of April 15 at my office at about 4:30. The French representatives

were MM. de Lapradelle, de Sillac and Clauzel. Major Butler and Mr. Warrin were present. For reasons which were not wholly clear, we made almost no progress. We took up the Preamble and the first two paragraphs of Article 1 and some other points, and even those took till eight o'clock. Finally, de Lapradelle proposed that he and I should meet the following evening, to which I agreed.

To connect up this account with the story of the English text, I mention that it was at this time that I made my redraft of the first two paragraphs of Article 1 in English.[1]

So, on the two following days, April 16 and 17, de Lapradelle and I met at my office with no one else present (except two or three secretaries of my staff) and agreed on a revised French text. The first evening we went as far as through Article 16 and in the interval between the two meetings I went over this first night's work with Butler, who seemed quite content with it.

Of course it is impossible to say much in detail or even in outline of the discussions and the drafts of these conferences with de Lapradelle, or of the various memoranda which had been gotten up in preparation for them. The way the work was done was that the text of Document 36, cut up on separate sheets, was revised and corrected in red ink as we went over it phrase by phrase. The text that we agreed on must speak for itself; it is in Document 37 (the left column).

Any one desiring to see just what revision was made should compare Documents 36 and 37. In making this comparison, however, it must be remembered that Document 36 *preceded* the changes in the English text made at the Fourteenth and Fifteenth Commission Meetings of April 10 and 11; in the text of de Lapradelle and myself these changes were taken into account and also those later changes in the English tentatively made at this time and formally approved later. These are described in Chapter XXXIV [2] and are incorporated in Document 31.

There are, however, two or three details about this de Lapradelle text, as I may call it, which I can mention. De Lapradelle tried his hand at a new translation of Wilson's Preamble, a task which all the French found to be one of great difficulty. To turn this one long sentence of Wilsonian style into a French sentence which would read like a French sentence and not like a translation and which would at the same time follow the English closely

[1] See p. 474 *sq.*
[2] See pp. 473-476.

and have literary qualities worthy of the character of the document and of its aspirations for the future, so as to equal in this regard the gracefulness of Wilson's writing, was the problem, one not yet solved.

In writing the Mandates Article (now 22) de Lapradelle and I went back to the French of the resolution of January 30 of the Council of Ten. The use of this resolution here resulted in a very important printer's error, which was not corrected till some time later, namely, the omission in the second paragraph of the words "et qui consentent à l'accepter" which, in their English form "and who are willing to accept it," had been in the Covenant since March 26.

The precise meaning of the English and the French of the second sentence of Article 4 of the Covenant has given rise to some discussion and debate. It now reads as follows:

English

> These four Members of the League shall be selected by the Assembly from time to time in its discretion.

French

> Ces quatre Membres de la Société sont designés librement par l'Assemblée et aux époques qu'il lui plait de choisir.

At the time in question the English was the same except for the word "States" instead of "Members of the League" so that it read:

> These four States shall be selected by the Assembly from time to time in its discretion.

The French of Document 36 translated the English as follows:

> Ces quatre Etats sont designés par l'Assemblée au moment et dans les conditions qu'elle juge convenables.

De Lapradelle changed it to read thus:

> Ces quatre Etats sont designés par l'Assemblée de temps à autre, à son gré.

It seems to me that this is a much better rendering of the meaning of the English "from time to time in its discretion" than

what came before or than the later and existing official text. Perhaps the English would have been clearer from a French point of view if it had continued to read as Hurst and I wrote it for the Drafting Committee (see Document 28): "These four States shall be selected from time to time by the Assembly in its discretion."

It was a pleasure to work with a scholar of the deserved eminence of de Lapradelle, a master of his own language, a lawyer of the front rank and having with these qualities a personality of much charm.

While the text that de Lapradelle and I agreed on was not in every respect exactly what I would have wished, it was very near it. Written as it was, in preparation for my meeting with Larnaude, it was invaluable.

This de Lapradelle text was printed immediately upon the conclusion of our final conference, namely, during the night of April 17. About four A.M. there had been finished a number of copies [1] sufficient for the meeting which was set for six hours later.

April 18 was the day of my meeting with Larnaude at his apartment in Neuilly. The following is what my Diary says as to this meeting:

> I spent the entire day in going over the French text with Larnaude, the other member of the Committee to make a French draft of the Covenant. We met at his apartment, 92 Boulevard Maillot, from 10 a.m. to 1 p.m., and from 3:30 p.m. to 8:45 p.m. and from 10:30 p. m. to 2 a. m. During the morning and afternoon there were present besides Warrin and myself and Larnaude, de Sillac, Clauzel, de Lapradelle and Professor Rostand. Neither de Sillac nor Clauzel was there in the evening. The French seemed to me to try to delay the proceedings but we reached a final agreement.

This record is naturally rather brief as it was dictated about 3 A.M. upon my return to my office after one of the most exhausting days imaginable. During the discussions there were many, many differences as to just what French was the equivalent of the English text and some of these were important. I do not think I yielded in any matter of moment.

The chief question of *literary* interest to me was in regard to the Preamble of the Covenant which is almost as impossible a piece of English prose from a French point of view as could be

[1] Only ten were printed.

written. The French reserved this to the last and I left it wholly to them. The translation was not made until after 1 A.M. when M. Rostand had an inspiration which all accepted with applause. Compare from the literary viewpoint the French (in Document 37) of the Preamble as agreed on with Larnaude with that of the Covenant of February 14 and with the present text.[1]

Most elaborate and detailed notes had been taken by Warrin and myself of the text agreed upon with M. Larnaude at this meeting. These were gone over and checked with de Lapradelle at my office on April 19 and at the conclusion of our conference he said that we were entirely in agreement as to the language adopted at the meeting of the day before. We added the Annex, which had not previously been written in French, and which had not been specially considered the previous day. This text thus checked and agreed on was immediately sent to the American Printing Office to be set up and printed, a task which was not completed till late in the evening of April 20. It is reprinted in Document 37 (right column) and is, I think, literally and exactly the French text agreed to on April 18 by Larnaude and myself as checked over and compared with de Lapradelle the next day, including the Annex then added.

In the meantime, the French had printed *their* version of the text agreed on by Larnaude and myself; I received a copy of that French version on April 20; I do not print that French version as a Document, but it is necessary to speak of it in detail as it substantiates the accuracy of the text which I have printed as that agreed upon by Larnaude and myself (Document 37, right column). The French version contained various errors of printing or proof-reading which were later corrected, mostly in the next French print; aside from such typographical errors, which require no attention, this French version was *literatim et verbatim* the Larnaude text which I have printed (Document 37, right column) *except* that in seven paragraphs there were some changes made by the French. Six of these were merely slight verbal corrections of French style, and for the sake of completeness, these are mentioned in a footnote.[2] The other instance did

[1] See in Document 20 Annex II to the minutes of the Tenth Meeting and Document 34.

[2] Five of these six paragraphs read as in the next French print, Document 38; these were Article 11, par. 2; Article 15, pars. 4 and 9; Article 17, par. 3; and Article 21. In Article 24, second sentence of first paragraph, the words after "international" were "qui seront créés ultérieurement seront placés sous la surveillance de la Société."

change the sense; but it seemed on looking at it to be a printer's error, for it was simply the omission of six words in the second paragraph of Article 16, "contribuer aux forces armées destinées à";[1] I mention it particularly because, whether it originated in a printer's error or not, it resulted later in a recasting of the paragraph. I repeat that this French version of the text agreed on by Larnaude and myself shows conclusively that the version that I have printed of that agreement (Document 37, right column) is correct. Both of these prints, I may mention (as was known at the time), were defective in Article 22 in respect of the omission of a few words, the printer's error above mentioned.[2]

At least for the time being, however, there were the two differing prints; in other words, there was at this time an American print of the French text as agreed upon (see Document 37, right column) this being what was considered by the British and ourselves to be the French text of the Covenant, and there was also the French print just mentioned, which was presumably the French idea of the French text. The problem now was to reconcile *all* the differences between the two; and the successive prints that were made at the one or the other printing office tended to that end. It will be appreciated that this problem was rendered more complicated by the fact that between April 21 and April 27 there was active discussion of the changes in the English text desired by the British at the instance of the Dominions; these changes were not wholly acceptable to the French, as I have told elsewhere.[3]

On April 21 the French sent in their next print (Document 38).[4] This corrected a good many of the obvious discrepancies in the previous print made by the French. Indeed, the only one of the *original* differences remaining which was of any particular consequence was in the second paragraph of Article 16. On the other hand, the French commenced to make changes elsewhere in the text about as they saw fit. One result of this was a great deal of work; each French print had to be gone over from beginning to end, word for word, to see if and where it had been changed.

In this later French print (Document 38) the number of

[1] See the next French print, Document 38, which also omits these six words.
[2] "Et qui consentent à l'accepter" in the second paragraph. See p. 519.
[3] See pp. 478-488.
[4] The printing of these successive French texts as Documents seems unnecessarily cumbersome; but I have tried in vain to find a shorter method of telling their story fully.

changes thus made was quite considerable; most of them, but not all, were either trivial or inconsequential; but some should be mentioned.

There were some changes made in the Preamble, making it very nearly, though not quite, the final French form; and the last paragraph of Article 16 was recast in its present shorter form. The new translation of that paragraph is not a very literal rendering of the English, but its legal effect, I think, is exactly the same.

This later draft also made a change in the rendering of one English expression which had given the French scholars a good deal of difficulty. In the second paragraph of Article 1 the Covenant uses the expression "fully self-governing State." What is "fully self-governing" in French?

Earlier the French had read "de self-government total" or "complet"; the Belgians had suggested "ayant des institutions représentatives"; de Lapradelle had written "s'administrant entièrement lui-même"; in the Larnaude text it read "jouissant d'une entière liberté de gouvernement"; now was introduced the phraseology destined to remain in the Covenant "qui se gouverne librement."

The point is a very interesting one, its chief difficulty arising perhaps from the fact that hardly any two people would agree in a given case as to what "fully self-governing" means in English.

At any rate when Butler and I went over this latest French print (Document 38) on April 22 we agreed to the changes above mentioned and also to accept the French print in respect of *most* of its variations from what I may call the American-British print (Document 37, right column).

I had our American print of the French recast accordingly; but even so there remained discrepancies, matters as to which the French and ourselves were not in accord. According to our notes made at the time, there were a dozen or so of these discrepancies [1]

[1] As noted at the time the corrections which we wished made in the French print were as follows:

Article 2. Insert *"par"* before *"un Conseil."*
Article 5 Strike out *"Etats"* twice and in each case insert *"Membres de la Socété."*
Article 6 Strike out *"des Nations"* (4th paragraph).
Article 8 Strike out *"son"* and insert *"leur"* (4th paragraph).
Article 11 *"menace"* instead of *"menacent."*
Article 16 In second paragraph, after *"pour"* insert *"contribuer aux forces armées destinées à."*
Article 21 *"et"* instead of *"ou."*

(aside from printer's errors and matters of punctuation); perhaps only three of them were of any consequence.

There was one other variance between the two prints that should be noticed. The French continued to print their six chapter headings which we wished omitted.

At this point was illustrated the enormous difficulty which existed during this period in arriving at *any* agreement on a French text to which could properly be applied the word "final." Certainly so far as the American print and the French print agreed, the British and ourselves were clearly entitled to suppose that the language of the French text was, to that extent, subject to no change. Neither of us were captious about this, however, for when the French wanted to change their style without changing the meaning, as in the Preamble, we had accepted it and said nothing about it, and changed our own print. However, on April 23, there was delivered to me at my office (with the Note of the French Delegation of April 22 which I have mentioned above)[1] a French proof of the Report of the Commission on the League of Nations, this including of course a text of the Covenant which was presumably intended as the final French text; I print this Covenant text [2] as Document 39. Now passing any questions of form, this text was materially and substantially changed from the French text previously agreed on, as an examination of it will disclose.

Look at the second paragraph of Article 16, for example, in Document 39 and compare it with the similar paragraph in the previous French print (Document 38). However, as this second paragraph of Article 16 contained one of the discrepancies of consequence between the American and French prints (see Document 37, right column, and Document 38) I will take a more glaring instance.

In the French text which I received on April 21 (Document 38) the second paragraph of Article 8 read thus:

Article 22 First paragraph, instead of *"en constituant la Société des Nations d'y incorporer"* read *"d'incorporer au présent Pacte."*
Second paragraph, insert after *"responsabilité"* the words *"et qui consentent à l'accepter."*
Fourth paragraph, instead of *"d'abord"* read *"en première."*
Sixth paragraph, instead of *"de l'Etat"* read *"du."*
Seventh paragraph, strike out *"ci-dessus visés."*
Article 23 (a) Insert *"internationales"* after *"organisations."*
Article 26 Instead of *"de ceux"* read *"des Membres de la Société."*

[1] See p. 484.
[2] Without the Report as such.

> Le Conseil, tenant compte de la situation géographique et des conditions spéciales de chaque pays, prépare les programmes de ces réductions. Les divers Gouvernements les examinent et en décident.

This is *exactly* the language which I had agreed on with Larnaude (see Document 37). There is not the slightest doubt of this, because it was not only, as I have said, printed in these words in the paper from the French received on April 21, but also in the French text received from the French on April 20. Now in the text annexed to the Report which was received by me on April 23 (Document 39) the second paragraph of Article 8 is thus printed:

> Le Conseil doit tenir compte de la situation géographique et des conditions spéciales de chaque Etat pour établir les plans de cette réduction. Ces plans sont soumis aux divers Gouvernements pour qu'ils les examinent et agissent en conséquence.

Now, who it was at the Quai d'Orsay that was making such changes as these I am not prepared to say. As I was one of the two members appointed by the Commission as a Sub-Committee to prepare the French text, I had the clearest kind of official right to say just what text should be in the French Report; but the thing that disturbed me most in the matter was not any question of courtesy or official position but the idea that anybody seriously dreamed that such tactics could succeed. Perhaps it was imagined that the text of this last print would not be examined with sufficient care to see whether it was changed or not, or would be looked at only in those comparatively few places where there were thought to be discrepancies.

However this may be, Butler came to my office on the same day (April 23) that this Report (Document 39) came in and went over it with Shepardson and myself word by word. We marked up a copy of it in red ink to show the way we wanted the French version, and I had this delivered to the French representatives; it was understood that we would be informed the next day what attitude would be taken in regard to it.

In order to show precisely what was done, I indicate in Document 39 the form of the text which was transmitted to the French; in those Articles (namely, Articles 2, 5, 6, 8, 16, 17, 21, 22, 23), as to which the text as we wanted it differed in *any* respect from the French text in the Report (Document 39) which

had been handed to me the day before, the words we desired omitted are in brackets and the words we desired inserted are in italics. The rest of the French text as in Document 39 we thus accepted, including those few cases in which it changed in minor matters what had been previously printed, as in the Preamble, for instance.

So at this stage the differences between the French text of the Covenant which the French were printing and the French text which I was having printed were in those Articles enumerated above and the differences in those Articles are indicated in Document 39.

Accordingly on the afternoon of the next day, April 24, MM. de Sillac and Clauzel came to my office and went over the texts with Warrin and myself. Most elaborate notes were made at the time with meticulous care.

The agreement that was reached at this meeting was in detail as follows:

The French accepted our text in Articles 2, 5, 6, 21 and 23, that is to say, our text of those Articles as shown in Document 39.

Article 8 was not completely agreed upon; the first, fifth and sixth paragraphs of that Article were the same in both texts so that they were not in question.

While the third paragraph was the same in the two texts, it was agreed to change the word "programmes" to "plans"; and the fourth paragraph was accepted as in our text.

The second paragraph of this Article 8 was radically different in the two texts, as I have mentioned above. I proposed a new redaction, precisely the language of the Covenant as it now is;

> Le Conseil, tenant compte de la situation géographique et des conditions spéciales de chaque Etat, prépare les plans de cette réduction, en vue de l'examen et de la décision des divers Gouvernements.

The question left open between the French and ourselves was as to the precise wording of the last phrase of this second paragraph of Article 8, "en vue de l'examen et de la décision des divers Gouvernements."

As to Article 16, the first and fourth paragraphs were the same in the two texts and so were not in question. As to the second paragraph of this Article, there was and had been a real discrepancy throughout. At the meeting I wrote out a new draft

which was accepted and which is almost literally [1] the language of the Covenant today:

> En ce cas, le Conseil a le devoir de recommander aux divers Gouvernements intéressés les effectifs militaires ou navals par lesquels les Membres de la Société contribueront respectivement aux forces armées destinées à faire respecter les engagements de la Société.

The third paragraph of this Article was identical in the two texts. However, the last words which read "pour imposer le respect des obligations de la Société," were changed so that they should read as they do in the Covenant "pour faire respecter les engagements de la Société."

In Article 17 there was only one very trifling difference between the two texts. The French had the expression "de leurs différends"; we had it "de leur différend," we agreed to make it read "du différend," as it reads now.

In Article 22 (the Mandates Article) the differences were, with the exception of the printer's omission [2] in the text of the French in the second paragraph, slight and immaterial. Our text of this Article, as it repaired that omission and otherwise, was almost literally accepted; in the first paragraph the change of a preposition was made [3] and in the fourth paragraph the French rendering of an adverbial expression [4] was accepted instead of ours. The language of the Article as we agreed to it is the present French text.

What all this means is that a complete agreement, presumably final, had been reached with the French regarding a French text of the Covenant except as to three matters: (1) part of the second paragraph of Article 8 mentioned above; (2) the chapter headings of the French which they wanted and we did not; (3) the list of invited States in the Annex, a matter which the French regarded as being still open. As to this the French were strictly correct for undoubtedly the Conference had the power to make additions to the list of the thirteen Neutral States if it so decided.[5]

There was another question which complicated the matter of the French text at this stage and which was as yet unsettled. This was as to whether and how far the French would accept

[1] Instead of "ou navals" the Covenant now reads "navals ou aériens."
[2] Of the words "et qui consentent à l'accepter."
[3] "Dans le présent Pacte" instead of "au présent Pacte."
[4] "D'abord en considération" instead of "en première considération."
[5] See the American Note on this matter quoted at p. 486.

the changes proposed in the British memorandum substituting "Members of the League" for "States," which I have described in detail in the preceding chapter.[1] Finally, as there told,[2] the French accepted all of these proposed changes except in Article 16 and in the second paragraph of Article 8, as to which the British withdrew their proposals.

Upon the reaching of this agreement on April 27 with the British and the French as to the matter of the use of the words "Members of the League" in the text of the Covenant, there was really a final agreement on the French text, for the French no longer questioned my redaction[3] of the second paragraph of Article 8 and abandoned their chapter headings.[4] The French at once reprinted their French text of the Report of the Commission on the League of Nations including the French text of the Covenant as we had agreed upon it, with changes as to "Membres de la Société," etc., to correspond with the English (this Report with the Covenant text is Document 40). Our Printing Office also made a print of this French text. The two still differed slightly, chiefly because the French in minor matters of printing style changed their print from time to time as they thought fit. I had to keep track of these changes and in so far as they did not matter, agreed to them and had them fixed up in our print by our Printing Office, most of the staff of which incidentally knew no French at all.

The discrepancies by this time had gotten down to very small matters and on April 28 I wrote this memorandum for Mr. Shepardson:

> There are certain differences between the French text as printed by the French Foreign Office and the French text as printed by us.
>
> Most of these are of trifling importance.
>
> I enclose one of our prints of the French text marked "17 corrections," which indicate those of the differences between the two texts which we should accept.
>
> I also enclose a list of the changes which should be made in the text printed by the French Foreign Office.
>
> With these two sets of changes I think that the two texts

[1] See p. 478 *sqq.*
[2] See p. 487 *sq.*
[3] See p. 526.
[4] Instead of these, there were printed in the French Report marginal titles of each Article.

would be literally the same, except for the insertion in the text we had printed of the names of the thirteen Neutral States.

In explanation of this memorandum I may say that I do not reprint, because it is unnecessary, what I may call the American French text at this time. This is what is called in the above memorandum for Mr. Shepardson "one of our prints" and the "17 corrections" mentioned were matters of the most insignificant character, such as the placing of commas, etc. In the memorandum to Shepardson I said that I enclosed a list of the changes which were necessary in the text printed by the French Foreign Office. This was a rather formidable looking list of 21 items, but most of them were really slips in the printing and nothing more; and as they were all corrected in accordance with my list before the Treaty was printed, I have incorporated the necessary corrections in Document 40; so the French text in that Document *is* the French text agreed on and may be regarded as the French text reported [1] by the Commission on the League of Nations; although the agreement about it, which was rather wearisome in being reached and has perhaps been as wearisome in the telling, was not reached until long after the final meeting of the Commission; indeed, not until just before the Plenary Session of the Peace Conference on April 28.

The Secretariat of course made a careful note of the changes adopted at that Plenary Session and had printed them thus as an addendum to the English text:

> At the Plenary Session of the 28th April, 1919, the following additions were made to the text of this Covenant:
>
> In Article IV, first paragraph, last line, after the words "representatives of" add, "Belgium, Brazil, Greece and Spain." [2]
>
> In Article V, first paragraph, at the end of the first line, strike out the comma and add: "or by the terms of this Treaty." [3]
>
> In the Annex, under the caption "First Secretary General of the League of Nations," add: "The Honorable Sir James Eric Drummond, K. C. M. G., C. B."

[1] In the Report in French which as an original record forms part of the Protocol of the Plenary Session of the Peace Conference of April 28, 1919, (extracts from this Protocol No. 5 are Document 33) some of these corrections had not been made; I have noted these in Document 40.

Furthermore, one error in the printed Report which was perhaps not considered was "du monde" for "dans le monde" as the final words of Article 25; but this too was corrected later.

[2] The Treaty order is "Spain and Greece."

[3] Later "this Treaty" was written "the present Treaty."

The utmost care was taken to see that the general Drafting Committee of the Conference knew the exact status of the text of the Covenant, both French and English. On April 29 I met Shepardson and an assistant to Dr. Scott, the American member of the general Drafting Committee; I gave to each of them a copy of the French Report marked so that it read exactly as I have printed it in Document 40; and I wrote a pencil memorandum showing that there were five matters in the French Report to be noted, namely:

(1) The marginal titles were not part of the text of the Treaty.

(2) The list of thirteen neutral States was omitted [1] from the French text (Annex).

(3) The amendment to Article 5 adopted by the Conference [2] was not in the French text.

(4) The names of four States to be on the Council (Article 4) were not in the French text.

(5) The name of the first Secretary General was not in the French text (Annex).

I said that I thought the French text was absolutely correct with the changes noted thereon in addition to the matters listed in the above memorandum; and I mentioned that the style of numerals (Roman or Arabic) used in the French and English texts, differed both in the body of the text and in the Annex.

I also gave to Butler, who came in, the same information and copies of the corrected French text. Butler said he was going to see Hurst at the Drafting Committee. The memorandum which I wrote for Shepardson at this time and of which Butler had a copy was this:

Herewith is a copy of the Report which the French printed, with the text of the Covenant corrected to show the way it should read according to the list of corrections which I sent you yesterday. I am sending a copy of this memorandum and of the enclosure to Major Butler.

I hope that we will be able to see that the French text is as indicated.

Also I would suggest that both the British and the American representatives on the Drafting Committee receive from the Secretariat copies of the English and of the French text as we have them.

[1] It appears, however, in the report as printed in Protocol No. 5.
[2] In English, "or by the terms of the present Treaty."

Then no change would be necessary for the purposes of the Treaty except the amendment to Article v proposed by President Wilson, the writing in of the name of the First Secretary General, and the insertion of the names of the four States in Article iv.

The French text, with the English, was now before the general Drafting Committee. I have already told [1] the story of the episode of May 5 regarding the addition in one of the proofs of certain words in Article 22 and the change in the Annex of the place of the name of Italy, and how these attempted changes were vetoed on the eve of the presentation of the "Conditions of Peace" to the Germans on May 7.

There remain to be mentioned certain changes in the French text made by the general Drafting Committee. Before coming to these, however, I may refer to one change which was attempted but finally was not made. When a copy of the "Conditions of Peace" presented to the Germans on May 7 came in, I went over the text of the Covenant, both French and English, very carefully for printer's errors. I found six of these, four in the English and two in the French. I sent out a memorandum of these through the Secretariat on May 14. On May 20, Mr. Grew, the American Secretary General, sent a letter to Shepardson saying that all the typographical changes which I had recommended had been made except one. That one was in the first paragraph of Article 8 which in the French now reads thus:

Les Membres de la Société reconnaissent que le maintien de la paix exige la réduction des armements nationaux au minimum compatible avec la sécurité nationale et avec l'exécution des obligations internationales imposée par une action commune.

In the "Conditions of Peace" the word "imposée" was printed in the plural "imposées" and I had said in my memorandum of printer's errors that it should be in the singular as the reference is to "exécution." [2] Mr. Grew's letter said that the plural had been retained because it was thought to be correct. However, the singular is used in the final French text of the Treaty.

One change of a single word made by the general Drafting

[1] See p. 501 *sqq.*

[2] The English is "the enforcement by common action of international obligations" (see Document 3, Article 4, for the origin of these words). The expression is not one of complete precision. Furthermore, the French "exécution" is not an exact equivalent of the word "enforcement."

Committee was in the next to the last paragraph of Article 15. The English read thus:

> The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

The French as Larnaude and I had agreed on it and as it went to the general Drafting Committee was as follows:

> Le Conseil peut, dans tous les cas prévus au présent article, porter le différend devant l'Assemblée. L'Assemblée *pourra* de même être saisie du différend à la requête de l'une des parties; cette requête devra être présentée dans les quatorze jours à dater du moment où le différend est porté devant le Conseil.

Shortly after my meeting with Larnaude on April 18 he wrote me regarding this paragraph as follows:

Présidence du Conseil

Comité consultatif juridique
de la Paix

47, Rue St. Dominque

REPUBLIQUE FRANCAISE

Neuilly sur Seine,
92 Boulevard Maillot
21 avril, 1919.

Cher Monsieur

Je vous serais reconnaissant de soumettre à M. le Président Wilson le doute que le texte anglais du Covenant laisse dans mon esprit, pour l'avant dernier paragraphe de l'article 15.

D'après ce paragraphe le Conseil peut toujours renvoyer l'affaire à l'assemblée.

Mais que signifie la seconde phrase "The dispute shall be so referred at the request of either party to the dispute?"

Cela signifie-t-il que, sur cette requête, le Conseil *est obligé* de se dessaisir et de soumttre le différend à l'assemblée?

Ou bien veut-on dire que la partie a le droit de le lui demander, mais qu'il reste juge de la décision à prendre sur cette demande, et qu'il peut ou non y déférer à son gré?

Si c'est la première interprétation qui doit prévaloir elle me semble bouleverser complètement l'économie du Covenant, car le Conseil sera toujours dessaisi dans les cas les plus graves, l'article 15 formant l'article capital du projet.

Veuillez croire à mes meilleurs sentiments.

F. LARNAUDE.

My answer to Larnaude of the next day which President Wilson, to whom I transmitted translations of the correspondence, later sent word to me was "just right" was this:

Cher Professeur Larnaude:

J'ai bien reçu votre honorée lettre du 21 courant et je ne manquerai pas à porter à la connaissance du Président la question dont vous m'écrivez.

Au cours d'un examen des travaux de la Commission, j'ai constaté qu'il se trouvait au troisième alinéa de l'article 13, comme celui-ci a été présenté à la Commission (maintenant devenu l'article 15), ce qui suit:

> "The Executive Council may in any case under this Article refer the dispute to the Body of Delegates. The dispute shall be so referred at the request of either party to the dispute."

Cette rédaction est bien la même que celle du présent texte, sauf les expressions "Executive Council" et "Body of Delegates" qui ont été remplacées par les mots "Council" et "Assembly."

En effet, il paraît qu' à la Commission il n'a pas été fait d'objection à la rédaction de cet article si ce n'est l'objection de M. Venizélos que la requête de l'une des parties devrait se faire dans un certain délai. Or, dans le procès-verbal du 7 Fevrier, M. Venizélos a bien employé le mot "droit."

> "Finalement, M. Venizélos fait remarquer qu'un certain délai devrait être fixé en ce qui concerne le droit pour chacune des parties à un litige de le renvoyer du Comité à l'Assemblée des Délégués, et ce point est généralement admis par la Commission."

Il est aussi à remarquer que l'amendement à cet article, alors l'article 13, maintenant l'article 15, dont le Comité de Rédaction a fait rapport à la Commission, est conçu comme il suit:

"Le différend sera dans ce cas porté devant elle à la requête de l'une ou l'autre des parties, pourvu que cette requête intervienne dans les quatorze jours de la soumission au Comité."

Bien sincèrement à vous,

David Hunter Miller.

The general Drafting Committee changed the word "pourra," in this paragraph of Article 15, to "devra" which is more accurate. It is entirely clear now in either text that the transfer of the consideration of a dispute from the Council is a matter of

right, upon request being made by one of the Parties within the period limited.

The remaining changes made in the French while the Covenant was before the general Drafting Committee were of a very minor sort. As a matter of course, following the English,[1] in the first paragraph of Article 4 the words "Principales Puissances alliées et associées" were substituted for the names of the five Great Powers; equally of course the results of the Plenary Session of the Peace Conference of April 28 were incorporated in the text by inserting the names of the four Powers on the Council in the first paragraph of Article 4, the words "ou des clauses du présent Traité" in the first paragraph of Article 5 and the name of Sir Eric Drummond in the "Annexe" which was so entitled instead of "Annexe au Pacte." Also, as in the English, where the word "air" had been added to the words "military" and "naval," so in the French the word "aériens" was added,[2] the four instances being in the second paragraph of Article 1, the last paragraph of Article 8, Article 9 and the second paragraph of Article 16.

In Article 9 the verb "est" became more accurately "sera" and in the first sentence of Article 16 there was a change of "et" to "ou."

In the second sentence of the first paragraph of Article 24 the general Drafting Committee followed the English more closely[3] by striking out the words "Il en sera de même de" at the beginning of the sentence and inserting the words "seront placés sous l'autorité de la Société" at the end so that it read:

> Tous autres bureaux internationaux et toutes commissions pour le règlement des affaires d'intérêt international qui seront créés ultérieurement seront placés sous l'autorité de la Société.

Furthermore in the Annex "Serbie" was corrected[4] to "Etat Serbe-Croate-Slovène," and the names of the thirteen invited States were inserted. While the names of these thirteen States appear properly in the French text of the Treaty of Versailles in the French alphabetical order, they are arranged in the English

[1] See p. 499 *sq.*
[2] This addition was made after the "Conditions of Peace;" see p. 504.
[3] Cf. Document 37. The change was made after the "Conditions of Peace."
[4] This correction was made after the "Conditions of Peace."

text in the English alphabetical order which differs, the initial letters of Spain and the Netherlands not being the same in the two languages.

With these changes, the French text was the French of the Covenant in the Treaty of Versailles which in this collection is Document 34.

The writing of a document in two languages has its disadvantages, regarding which much has been written; but it has its advantages too. If one is turning an agreement written in English into some other language, and one finds a clause which does not seem to translate, it is a very good indication that there is something wrong with the English. Indeed it is an excellent test of the precision of a phrase in English to turn it into some other familiar language and see how it looks.

Perhaps it would be impossible to write an international document of the character of the Covenant in any two languages without there being at least some arguable differences in meaning between the two texts; in respect of the Covenant of course many ignorant assertions of non-existent differences have been made; but even arguable differences are not always a disadvantage in my opinion, for they often tend to throw light on the meaning and understanding of the document as a whole.

The idea of some people that an elaborate statute or charter can be so drafted as to have only one conceivable meaning in every given place, if written in "plain English" as such people say, is a laughable delusion. In this sense there is no such thing as "plain English" or "plain" any other language. How in the light of our past history any American can talk about "plain English which needs no interpretation" passes my comprehension. No human being has ever yet been able fully to find out what the words "direct tax" in our Constitution mean and there could be hardly anything simpler than this expression of nine letters, one adjective and one noun. As John W. Davis said in a letter which I have quoted in another connection:

> . . . a certain famous charter which has been much praised as a model of constitutional style, and which in the Convention passed through the Committee of the Whole, the Committee of Revision, and the Committee on Style under Gouverneur Morris, has given the Courts of the U. S. A. work for one hundred and thirty years in an effort to fathom all its meaning—and the job is not finished yet.

It is certainly arguable at least, and I think myself that the contention is sound, that there is on the whole less room for debate as to the meaning of a document carefully written in two languages than if written in one. We are apt to think of the few points where some ingenious mind may contend that the expression of the one text is not absolutely identical with the other. We should, however, remember the many places where a possible doubt which might be raised by the attribution of a duality of meanings to the one text is precluded by the other equivalent.

The French text of the Covenant is, all in all, an admirable counterpart of the English; together the two form a finer World Document than either one would separately.

CHAPTER XXXVI

THE GERMAN PROPOSALS

THE negotiations at Paris between Germany and the Allied and Associated Powers after the presentation of the "Conditions of Peace" on May 7 and prior to the signature of the Treaty of Versailles on June 28, 1919, were carried on in writing. It seems unnecessary to attempt here to extract from that voluminous correspondence all the incidental and other references to the League of Nations, so only the more direct and essential portions of the Notes are here quoted. The entire correspondence of the period has been published.[1]

Various Committees to consider the German comments on the Treaty were set up pursuant to this communication from the General Secretariat of the Conference under date of May 10:

> ARTICLE I. In order to deal with questions of detail, requests for explanations and the like, referred by the German Delegates during the 15 days which intervene before they furnish their global reply to the Treaty of Peace to be handed to them, the Secretary General is empowered to refer to the following Committees, each of which will be composed of one representative each of the United States of America, the British Empire, France and Italy (in the event of the Italian Delegation returning):
>
> 1. Committee on the League of Nations.
> 2. Committee on the Geographical Frontiers of Germany.
> 3. Committee on Political Clauses affecting Europe.
> 4. Committee on Political Clauses outside Europe.
> 5. (a) Committee on Military Clauses.
> 5. (b) Committee on Naval Clauses.
> 5. (c) Committee on Air Clauses.
> 6. Committee on Prisoners of War and Graves.

[1] See *Materialen betreffend die Friedensverhandlungen,* Charlottenburg, 1919. A French text is entitled *Notes échangées entre le Président de la Conférence de la Paix et la Délégation allemande du 9 mai au 28 juin, 1919* and is reproduced in *La Paix Des Peuples,* vol. VIII of *Archives De La Paix,* Paris, 1928. An English text (incomplete) is in Senate Document 149, 66th Congress, 1st Session. The final elaborate statement of the German position as to the Treaty of Peace, dated May 29, is also to be found in *International Conciliation,* October, 1919, No. 143, and in the same series for November, 1919, No. 144, is contained the global Reply of the Allied and Associated Powers with the covering Note of M. Clemenceau as President of the Peace Conference under date of June 16, 1919.

7. Committee on Responsibilities and Punishment.
8. Committee on Reparation and Restitution.
9. Committee on Financial Clauses.
10. Committee on Economic Clauses.
11. Committee on Ports, Waterways and Railways.
12. Committee on Labor.
13. Drafting Committee for the Final Clauses.

ARTICLE II. The Secretary General will refer all questions of policy to the Supreme Council but will use his discretion to refer all questions of detail to the above committees, who should themselves in addition exercise their judgment if they consider questions of policy are involved to refer the questions to the Supreme Council.

In lieu of any comments on the Covenant, the German Delegation, by Note of May 9, submitted an elaborate Draft of their own, including as an Appendix, an "International Workers' Charter."

The German Draft (omitting the Appendix), with the English version transmitted by the German Delegation, is Document 35. The German Note of transmittal (official translation) was as follows:

Versailles, le 9 mai 1919.

Monsieur le Président,

La Délégation allemande de la Paix a l'honneur, en remettant ci-joint un projet allemand, de prendre position en ce qui concerne la Ligue des Nations. Ce projet présente, à ses yeux, des suggestions d'ordre essentiel au problème de la Ligue des Nations. La Délégation allemande de la Paix se réserve de s'exprimer d'une façon encore plus détaillée au sujet du projet des Gouvernements alliés et associés. Dès à présent elle appelle toutefois l'attention sur la contradiction résultant de ce que l'Allemagne doit signer le statut de la Ligue des Nations en tant que partie intégrante du projet du traité qui nous a été remis, alors qu'elle ne se trouve pas parmi les Etats invités à entrer dans la Ligue des Nations. La Délégation allemande demande si et, le cas échéant, dans quelles circonstances, pareille invitation est envisagée.

Agréez, Monsieur le Président, l'expression de mon respect le plus distingué.

BROCKDORFF-RANTZAU.

A Son Excellence le Président
de la Conférence de la Paix, etc.
Monsieur Clemenceau.

Doubtless the Germans at this date were too concerned with other questions of the Treaty of Peace to do more than thus place their views on record, with an inquiry as to the admission of Germany to the League; and there was perhaps no expectation as there was certainly no possibility, that the German Draft would bring about any change in the Covenant as written.

The acknowledgment of the German Note of transmittal was in the following terms:

Paris, le 10 mai, 1919.

Monsieur le Président:

J'ai l'honneur de vous accuser réception du projet allemand de Société des Nations.

Ce projet sera renvoyé à la Commission compétente formée par les Puissances alliées et associées.

Les délégués allemands pourront constater par un nouvel examen du Pacte de la Société des Nations que la question d'admission de nouveaux membres dans cette Société n'a pas été omise, mais est prévue explicitement dans le deuxième paragraphe de l'article premier.

Veuillez agréer, Monsieur le Président, l'assurance de ma haute considération.

CLEMENCEAU.

A Son Excellence
M. le Comte Brockdorff-Rantzau,
Président de la Délégation allemande,
Versailles.

The reply sent to the German proposals [1] was in substance the work of Cecil. The draft which he prepared was the basis of discussion at a meeting of the above mentioned Committee on the League of Nations on May 16 attended by Bourgeois and Baron Makino as well as by Cecil and myself; and the slightly modified draft of the Committee was almost literally the answer sent under date of May 22, which follows:[2]

The Committee of the Allied and Associated Powers appointed to consider the proposals of the German Government on the subject of the League of Nations have examined these proposals with care. They note with interest the stipulations contained in the project of the German Government, and have considered that a

[1] See Document 35.
[2] The English text circulated by the Secretariat.

suitable opportunity for the general discussion of these stipulations will arise when the League has been definitely constituted. For the moment, they limit themselves to drawing attention to a certain number of the specific points raised.

They beg to point out that the proposals of the German Government deal with matters which have been discussed at length by the Commission of the League of Nations. But they consider in general that the proposals of the Covenant are much more practical than those of the German Government, and better calculated to secure the objects of the League.

They are glad to note that the German Government is in favor of a League for the maintenance of peace which shall be based on, and which shall give effect to, the general principles of democratic government. With that point of view they are in hearty agreement. But they do not consider that all the specific proposals of the German scheme would, in practice, be an advantage for the purpose.

They submit the following observations on certain of the suggestions put forward by the German Government:

1. With regard to the establishment of a separate International Mediation Office (paragraph 16-18, and 62 of the German project), they do not consider that any body of mediators chosen in accordance with the German plan would in fact have the necessary authority to settle international disputes or to maintain the peace of the world. That will be the function of the Council as constituted by the Covenant.

At the same time they are in sympathy with the view that some system of impartial Commissions for conciliation may in many cases be the most suitable and the most effective means for the preliminary investigation, and where possible, for the settlement of disputes not taken to arbitration; and they beg to point out that there is nothing in the Covenant to prevent the use of such Commissions. They anticipate that in practice such Commissions will be set up whenever they would serve a useful purpose.

2. The proposals of the German Government for the composition, jurisdiction and procedure of a Permanent Court of International Justice (paragraphs 14-15, 29-36) have been carefully reviewed, and will be submitted for detailed consideration to the Council of the League of Nations, when it prepares a plan for the establishment of a Permanent Court in accordance with Article 14 of the Covenant.

3. The League of Nations Commission of the Conference at an earlier stage considered the principle of obligatory arbitration (paragraphs 30-33), and decided that its universal application in the form proposed is not practicable at the present time. The Committee point out, however, that they have provided for an obli-

gatory recourse to pacific means for the settlement of all disputes and they believe that the establishment of a Permanent Court will do much to encourage the extension of the principle of arbitration.

4. They are in sympathy with many of the proposals made in paragraphs 44-53 of the German Government's project with reference to Freedom of Transit and Communications and the economic and commercial relations between different peoples. They beg to point out that general agreements on these matters, of the sort suggested by the German Government, are already under consideration by the Allied and Associated Powers, and that they will be submitted in due course to the League of Nations.

5. With regard to the proposal that all costs and damages resulting to Members of the League from a breach of the Covenant should be paid by the Covenant-breaking State (paragraph 65), the Allied and Associated Powers recognize generally the justice of the principle laid down by the German Government, which is indeed of general application. They are, however, so confident that this measure would in fact be adopted by the League in the unfortunate event of a breach of the Covenant that they do not consider any modification of the provisions of the Covenant to be required.

6. They are glad to note that the German Government is in favor of disarmament (paragraphs 40-42). They beg to point out that the Covenant provides for the preparation and submission to the Members of the League of proposals for international disarmament.

7. They note the proposals of the German Government (paragraphs 62-64) as to sanctions for breach of obligations of the Members of the League. They are, however, of opinion that the automatic economic pressure on Covenant-breaking States provided by Article XVI of the Covenant, to be followed by such international military or naval action as may be necessary is likely to be speedier and more effective than the German suggestions.

In their final Observations of May 29, 1919, the German Delegation vigorously protested against the non-admission of Germany to the League. After quoting at some length from the utterances of President Wilson and various Allied statesmen the German Observations [1] went on to say:

> These manifestations made it appear as a matter of course to the German people that it would, from the beginning, participate in the establishing of the League of Nations. But in contradic-

[1] For this and following extracts from the German Observations there are various translations available; I have used the one which was made under official German direction.

tion to them, the statute of the League of Nations has been framed without the cooperation of Germany. Nay, still more: Germany does not even stand on the list of those States that have been invited to join the League of Nations. To be sure, Germany may apply for admission which, however, is made dependent on "effective guarantees," the extent and tenor of which she does not even know.

The importance of Germany is independent from her temporary military or political power; therefore, without her being admitted, a true "League of Nations" cannot be spoken of. What the treaty of peace proposes to establish, is rather a continuance of the inimical coalition not deserving the name of "League of Nations." The inner structure, too, does not realise the true League of Nations. Instead of the dreamt of holy alliance of the nations, there reappears in it the fatal idea of the holy alliance of 1815, the belief as though it were possible to secure to the world a peace from above by way of diplomatic conferences with diplomatic organs. We miss technical proper authorities with impartial tribunals beside the select committee controlled by the Great Powers which may submit the whole civilised world to its control at the expense of the independence and equality of rights of the smaller States. The maintenance of the old political system with its tricks and rivalries based on force is thus not rendered impossible!

To this protest the covering Note of Clemenceau of June 16, made this answer:

Les Puissances alliées et associées ont examiné avec soin la demande présentée par la Délégation allemande et tendant à faire admettre immédiatement l'Allemagne dans la Société des Nations, Elles ne peuvent accéder à cette demande.

La Révolution allemande a été retardée jusqu'aux derniers moments de la guerre, et jusqui'ici les Puissances alliées et associées n'ont aucune garantie que cette Révolution représente un changement durable.

Dans l'état actuel du sentiment public international, il est impossible d'attendre des nations libres du monde qu'elles s'associent immédiatement et sur un pied d'égalité avec ceux qui leur ont causé des torts si graves. Tout essai pour obtenir ce résultat d'une manière prématurée retarderait, au lieu de la hâter, la venue d'un apaisement désiré par tous.

Mais les Puissances alliées et associées croient que si le peuple allemand démontre par des actes son intention de satisfaire aux conditions de la paix, son renoncement pour toujours à la politique agressive qui lui a aliéné le reste du monde et qui a été la

cause de la guerre, et sa transformation en un peuple avec qui l'on peut vivre en bon voisinage et sur un pied de bonne entente, alors le souvenir des dernières années s'effacera rapidement, et il sera possible de compléter dans un avenir non éloigné la Société des Nations en y admettant l'Allemagne. Les Puissances alliées et associées désirent sincèrement qu'il puisse en être ainsi. Elles croient que l'avenir du monde dépend de la coopération étroite et amicale de toutes les nations en vue de régler les questions internationales et de favoriser tout ce qui touche au bien et au profit de l'humanité. Mais c'est surtout de l'action du peuple allemand lui-même qu'il dépendra de rapprocher la date de son entrée dans la Société des Nations.

In addition to the foregoing expression in the Note, the covered Reply of the Allied and Associated Powers adverted to the subject of Germany's admission to the League in the following language:

Enfin, la Délégation allemande proteste contre le fait que l'Allemagne n'a pas été invitée à contribuer à la formation de la Société des Nations à titre de membre fondateur. Toutefois, le Président Wilson n'a pas prévu de Société des Nations qui comprendrait à ses débuts l'Allemagne et l'on ne peut citer de lui aucune déclaration à l'appui de cette prétention. En fait, dans son discours du 27 septembre 1918, les conditions qui doivent présider à l'admission de l'Allemagne ont été établies avec la plus grande précision.

"Il est nécessaire de garantir la paix et cette garantie de la paix ne peut être l'objet d'une réflexion faite après coup. La raison—à parler une fois encore franchement—pour laquelle il faut que la paix soit garantie, c'est qu'il y aura des parties contractantes dont les promesses, on l'a vu, ne sont pas dignes de foi, et il faut trouver le moyen, dans le règlement même des conditions de paix, de supprimer cette source d'insécurité."

Et plus loin:

"L'Allemagne aura à se refaire une réputation, non par ce qui arrivera à la table de la paix, mais par ce qui suivra."

Les Puissances Alliées et Associées escomptent l'époque où la Société des Nations établie par ce traité ouvrira son sein à tous les peuples; mais elles ne peuvent faire abandon d'aucune des conditions essentielles à une société durable.

There was further reference to the question of Germany's membership in the League in other remarks regarding the League of Nations in the correspondence of the Parties from which I have quoted. Of more present interest, perhaps, is the

fact that the Germans proposed to add to the Covenant a supplement regarding economic relations, which the Allied and Associated Powers rejected as unnecessary; and it is quite significant that the Germans elaborately treated the question of disarmament and of the military, naval and air clauses of the Treaty of Versailles under the heading of The League of Nations, as to which their proposals were as follows:

> A lasting peace of the world can only be reached by means of a League of Nations, which guarantees equal rights to the great as well as the lesser powers. In the introductory remarks it has already been shown that this view of the character and object of the League of Nations has also been manifested in momentous expressions of opinion of leading statesmen of the Allied and Associated Powers. At the same time it was necessary to show how far the statutes for a League of Nations as contained in the draft for a treaty of our opponents differ from these views. Germany, for her own part has elaborated a draft for a League of Nations and presented it to the Allied and Associated Governments regarding which the latter expressed their position in a Note of May 22nd, 1919.
>
> Without the intention at this time of dwelling upon the views expressed in the Note, the German Delegation is prepared to negotiate upon the basis of the draft for a League of Nations contained in the draft for peace under the condition that Germany enters the League of Nations as a power with equal privileges as soon as the agreed upon peace document has been signed.
>
> At the same time Germany demands further under maintenance of the fundamental ideas of its own draft for a League of Nations and in expectation that these fundamental ideas will become current in the course of time, that regulations regarding economic relations be introduced in the draft for the League of Nations guaranteeing completely equal and mutual rights for all nations. In agreement with President Wilson's words in point 3 of his speech before Congress of the 8th January 1918 mentioned above, the following supplement to the Convention of a League of Nations is proposed:
>
> "In carrying on trade, industry and agriculture the citizens of any one state of the League are to have equal rights with the citizens of the other when doing business there, particularly regarding payment of dues and impositions.
>
> The states of the League of Nations will not participate directly or indirectly in measures designed to continue or to resume an economic war. The League of Nations reserves measures of constraint.

Goods of all kinds which may come from the territory of one state of the League of Nations or which are being sent to that of another shall be free from all transit dues in the territory of the States of the League.

Mutual intercourse within the League of Nations is not to be interfered with by prohibitions of imports, exports or transit unless these measures are required to maintain public safety, health or as measures against contagions, diseases or for the purpose of carrying out internal economic legislation.

Individual members of the League may at option regulate their economic regulations to one another within the compass of the League with due regard for their special needs by means of supplementary agreements in other cases than those mentioned above.

They acknowledge the creation of a commercial treaty comprising the whole world to be the aim of their endeavours.

At the same time care must be taken that no State of the League, nor a majority of such may have the right to interfere with the internal economic or traffic relations of another State of the League."

Furthermore Germany must demand in agreement with President Wilson's declaration of September 27th, 1918:

"That within the League of Nations there may be no special selfish economic combinations; that no application of any kind of economic boycott or exclusion may be permissible." The German Delegation notices with satisfaction that their opponents' draft for a League of Nations contains a regulation which provides for a fair and humanitarian determination of the conditions of labor and expresses the hope, that the application of this regulation will realize the ideas forming the fundamental basis of the German counter-proposition for a League of Nations.

Borne by the thought that the League of Nations proposes to carry out the ideas of justice and under the expectation that Germany enter the League with equal privileges immediately upon conclusion of peace, the Government of the German Republic is prepared to agree to the fundamental ideas of regulations concerning army, navy and air forces as proposed in Part v. It is especially ready to agree to the abolition of compulsory military service under the condition that this measure be the beginning of a general reduction of armaments and abolish compulsory service, according to article VIII of our opponents' draft for a League of Nations.

The readiness of the Government of the German Republic to agree to reduce its armaments before the other powers do so is the best proof that it has abandoned all militaristic and imperialistic tendencies for ever.

The German Government must, however, demand a period

of transition also. The following regulations are accordingly proposed for Germany:

"The German land forces are not to exceed a total of 100,000 men, including officers and depots. This army is intended to preserve order within the confines of the country, to protect its frontiers and to provide for the obligations arising for Germany upon its admittance to the League of Nations.

During the period of transition Germany retains the right to maintain such forces as are required to preserve internal order, which is so much shaken at the present time. The duration of the period of transition and the strength of the army are to be especially agreed upon and in case of necessity determined by the League of Nations.

The organization of the army and its armament are to be left to Germany, as indeed to each member of the League.

Under the presumption that Germany enter the League of Nations upon the conclusion of peace and in expectation of further mutual action she is prepared in agreement with the draft for peace to dismantle the fortresses in the West and to establish a neutral zone.

A special agreement must first be made concerning the manner of preserving internal order and safety in this zone.

Under the condition of a financial regulation Germany is prepared to surrender not only surface warships demanded in article 185, but all ships of the line.

For Germany the principle also holds good that no state shall be subjected to any special supervision of the process of its disarmament except that of the League."

The German Government is prepared to enter into negotiations regarding all further matters of detail upon a basis of equality. An extension of the spaces of time allowed in section v which are technically impossible to fulfill and the manner of utilizing superfluous war-material of the Army and Navy for peaceful and in particular economic objects must be given due consideration. In the field of aeronautics Germany is ready to submit to every regulation to which all members of the League of Nations are subjected and also to allow to every member of the League those rights as to transit of and landing in her territory which are allowed to Germany by all other powers.

To bring about a speedy conclusion of all details the German Government proposes immediate oral negotiations. She reserves the right to discuss the preparation of the details of the military and naval conditions of the draft in a special note.

It is the principal and most valuable aim of peace to provide security that this war shall have been the last and that humanity be preserved from the return of such terrible catastrophes. Ger-

many is prepared to do everything within her power to gain this end. According to the above propositions it would not be her fault, if the nations of the world were disappointed in this expectation and if conditions were created which would of necessity lead to renewed war.

The German Observations did result in certain changes in the Military, Naval and Air Clauses of the Treaty, which I need not here enumerate; but no alteration was admitted in the text of the Covenant; the relevant portion of the Reply of the Allied and Associated Powers which is now quoted, was part of "leur dernier mot":

I

Le Pacte de la Société des Nations constitue pour les Puissances alliées et associées la base du Traité de Paix. Elles en ont avec soin pesé tous les termes. Elles ont la conviction qu'il apporte, dans les relations des peuples, au service de la justice et de la paix, un élément de progrès, que l'avenir confirmera et développera.

Jamais les Puissances alliées et associées,—le texte même du Traité le prouve,—n'ont eu l'intention d'exclure indéfiniment de la Société ni l'Allemagne ni quelque puissance que ce soit. Elles ont pris, à cet effet, des dispositions qui s'appliquent à l'ensemble des Etats non membres et qui fixent les conditions de leur admission ultérieure.

Tout pays dont le Gouvernement aura clairement prouvé sa stabilité en même temps que sa volonté d'observer ses obligations internationales,—celles notamment qui résultent du Traité de Paix—trouvera les principales Puissances alliées et associées disposées à appuyer sa demande d'admission dans la Société.

En ce qui concerne spécialement l'Allemagne, il va de soi que les événements des cinq dernières années ne sont pas de nature à justifier présentement une exception à la règle générale qui vient d'être rappelée. Dans son cas particulier, une mise à l'épreuve est nécessaire. La durée de cette épreuve dépendra, pour une large part, des actes du Gouvernement allemand et c'est à lui qu'il appartient, par son attitude à l'égard du Traité de Paix, d'abréger la période d'attente, que la Société des Nations jugera nécessaire d'établir, sans avoir jamais songé à la prolonger abusivement.

Après que ces conditions indispensables auront été remplies, les Gouvernements alliés et associés ne voient pas de raison qui puisse empêcher l'Allemagne de devenir, dans un avenir non éloigné, membre de la Société.

II

Les Puissances alliées et associées estiment que, contrairement à la proposition allemande, une addition au Pacte n'est pas nécessaire en ce qui concerne les questions économiques. Elles font remarquer que le Pacte prévoit[1] que, "conformément aux prévisions des Conventions internationales présentes ou à venir, les Membres de la Société... prendront des dispositions pour assurer et maintenir la liberté des communications et du transit, et aussi un traitement équitable pour le commerce de tous les membres de la Société." Dès que l'Allemagne sera admise dans la Société, elle bénéficiera de ces dispositions. L'établissement de conventions générales concernant les questions de transit est en ce moment envisagé.

III

Les Puissances alliées et associées sont prêtes à accorder des garanties aux droits des minorités allemandes en matière d'éducation, de religion et de culture dans les territoires transférés de l'Empire allemand aux nouveaux Etats créés par le Traité. Ces garanties seront placées sous la protection de la Société des Nations. Les Puissances alliées et associées prennent acte de la déclaration des Délégués allemands que l'Allemagne est décidée à traiter sur son territoire les minorités étrangères conformément aux mêmes principes.

IV

Les Puissances alliées et associées ont déjà indiqué aux délégués allemands que le Pacte de la Société des Nations contient des dispositions[1] relatives à "la réduction des armements nationaux jusqu'au point minimum où elle sera compatible avec la sécurité de chaque Nation et le pouvoir de faire respecter grâce à une action commune les obligations internationales." Elles reconnaissent que l'acceptation par l'Allemagne des termes fixés pour son désarmement facilitera et hâtera la réalisation d'une réduction générale des armements, et elles ont l'intention d'ouvrir immédiatement des négociations en vue de l'adoption éventuelle d'un projet de réduction générale. Il va sans dire que la réalisation d'un tel programme dépendra pour une large part de l'exécution satisfaisante par l'Allemagne de ses propres engagements.

[1] Note that the quotation from the Covenant is not from the French text.

CHAPTER XXXVII

LOOKING BACKWARD

EIGHT years have passed since the Covenant of the League of Nations was written. What is to be said of the document in the light of that period?

Most striking and to my mind equally obvious is the fact that if not written in 1919 as a part of the Treaty of Versailles, no Covenant would have been written at all, no League of Nations would have existed. Perhaps in some other generation some union of civilization would have come about, for that is the trend of history; but not now, not in our time.

Of all the silly comments about the Conference of Paris and its times, the most inane is that it would have been better to write the agreement about a League later, when there would have been more time for calm reflection and when the war feelings had passed and so on; all of which is the quintessence of stupidity, for there has been no moment since 1919 when either that agreement or any other agreement whatever could have been reached. Of course it would have been possible during these years to have discussed and written and argued and talked about a League or an Association or some other desideratum; but all the talk and all the writing would have signified nothing except to the talkers and the writers. The experiment had to be started when there was a chance to try it out or else remain as a lost thought in a wilderness of words.

The wisest of Wilson's many wise decisions was to put and keep the League in the Treaty of Peace.

These eight years have given the League a chance to prove to the world the necessity of the idea; the recurrent international conference, which was finally the brilliant success of Lord Grey's tragic failure of 1914, has come to stay; the world could now no more do without it than without the wireless; and that recurrent conference is the fundamental fabric of the League.

Another outstanding circumstance is that the Covenant remains about as written. The few textual changes made and even

those thus far seriously proposed are of a quite minor character, relating to no basic principle but rather to internal administration or matters of detail or procedure. The Covenant has worked and on the whole it has worked very well, and better as time goes on; the adaptability of a document to the realities of human affairs and its functioning under unforeseen and changing conditions are its real tests; and these the Covenant has met.

That this is true despite the absence of the United States is explicable only because it has happened. No one in 1919 would have believed possible such an outcome. Indeed, the volunteer grave-diggers here in the United States who so cheerfully came constantly to bury the League and never to praise it have had once and again in astonishment to lay aside their shovels. The entrance of Germany as opposed to her original hostility and the French devotion of 1927 to the League as an institution of peace as contrasted with the cynical or indifferent scepticism of 1919 are equivalent marvels. More overwhelming proof of the necessity and value of the League idea it would be impossible to imagine. And the depth of European sentiment in this regard, notably among the small and militarily unimportant Powers, was seen when the World Court reservations of the United States Senate were deemed unacceptable; they were not accepted because they held the possibility at least of weakening the existing institution; and this danger weighed more heavily on the one side of the balance that did the admittedly weighty sentimental advantage of American cooperation on the other.

Of course it is a fact, which I would not only admit but assert, that the League, without the United States as a Member, has not been either *in esse* or *in posse* the League that was looked forward to in 1919. Nothing could be more easily shown, if one reviewed the years since the Peace Conference. Stumbling action and confused hesitation have often marked the path, when Geneva perforce thought of the political isolation of the Great Republic.

But it is sometimes said, and sometimes thought, that the Covenant is not the charter proposed in 1919, that the Covenant in operation is, despite the minor character thus far of textual changes, not at all the written Covenant, even aside from and beyond the factual results of the incompleteness of the League.

This might be conceded if by the Covenant and the League were meant the campaign picture drawn here in 1920, a picture which was of enormous effect as propaganda; though in truth the falsehoods told about the "six votes," the infamous statements of

certain women about the white slave traffic, the nightmare of "our boys" dying in the Balkans under Article X, the nonsense about the Monroe Doctrine and the moonshine about immigration made up an incredible farrago of balderdash; and very naturally some of those who remember their own wild language would like to have it thought now that they were talking of something else.

The truth is that the Covenant, as a political document, has worked about as it was written, subject as any such Treaty, of necessity, must be, to the shifting political actualities of the times. Nothing would be easier than to put one's finger on this or that episode and point out that the language of Article so-and-so has on such-and-such an occasion not been literally carried out by the League or has been tacitly disregarded or conveniently overlooked. It could not be otherwise in an imperfect world, and even in a better world hardly otherwise during the opening phases of a new and momentous experiment. The correspondence of the important figures in our own politics under George Washington as President discloses many similar doubts and hesitations in early American history.

Doubtless the humanitarian and cooperative activities of the League have gone beyond the imagination of all but a few of those who considered the language of the Covenant in 1919; the same thing is true of the work of the Secretariat which has steadily achieved appealing and noteworthily increasing success; and almost nobody dreamed how busy the League would have to be. The Assembly is to meet "at stated intervals," says the Covenant, thinking of infrequent regularity; it is the Council which must meet "once a year" by the text; but the yearly session of the Assembly is now a fixture; and the Council has met nearly fifty times, with quarterly meetings the rule. The numbers of other conferences under the League have made it indeed the "almost continuous session" of Colonel House's letter of July 16, 1918.

Despite the debates and the resolutions of the various Assemblies, the political change that has arrived is not in the Covenant, but rather in the governmental, official and public attitudes regarding the objectives of the Covenant. It is coming and has partly come to be seen that peace means a situation in which neither the guarantees of Article 10 nor the sanctions of Article 16 are called into execution; and so means a situation which depends on the conference table agreements of Articles 11 and 19, with those other Articles in the background. They are there

and are of value; certainly the fact of Article 16 has more than once been of importance as a warning; but neither its sanctions nor the words of Article 10 are the first in action, as they were in debate; for the security of Articles 11 and 19 is the security of arbitration and of freedom from attack, while the security of Articles 10 and 16 is the security of compulsion and of reparation.

Thus even the Assembly debates and resolutions about the guarantees of Article 10 and the sanctions of Article 16 have meant in part a clearer view of their legal effect, but more broadly have been a recognition of the Covenant as a whole, a comprehension of its totality as distinguished from one part of its system.

I do not mean to intimate that either in this regard or in others the authors of the Covenant in 1919 fully realized how the League would operate. For various reasons, it is often impossible for the framers or the students of any political paper of importance to tell from its language just how it is going to work. Instances in English and American history are so numerous that they could be taken almost at random. The Statute of Frauds, the Statute of Uses, our own Constitution and the Anti-Trust Act are well known examples, and in the history of other countries there are others, almost equally familiar. Now, partly this is due to matters of language and subsequent interpretation but chiefly it is due to the impossibility of forecasting the course of human action; but in general the Covenant has worked according to what its authors thought it meant and as they hoped; there have been few surprises.

Doubtless one of the very greatest achievements of the Covenant was the change that it made in the usual methods of the conduct of diplomacy. The substitution of personal intercourse for communicated correspondence seems a very simple thing; but its implications are very far-reaching. It is a commonplace to say that a meeting of interested individuals of any group at all brings out their different points of view, their divergence and their concurrence as well as the possibilities of compromise, much better and much more quickly than any other method of interchange of human thought. But there is something more to it than this; no individual can say to another just what he would write to him; you may read a prepared statement at a meeting; but I defy any one to talk a prepared statement. A conversation carried on in the form of diplomatic correspondence is as com-

pletely impossible as would be a debate carried on in the form of Equity pleadings. It is possible to write dialogue; but not even government officials could dialogue diplomatic notes.

The trend toward publicity in international relations has a relevance here. To keep correspondence secret is very easy; to keep the result or even the details of a meeting secret, when the fact of the meeting is known, is no longer to be done; the Fourth Estate can here be trusted to find out and to tell. Discussion with the door shut has the advantage of simplicity and informality; but nowadays the world has its own dictagraph in the room.

Stress is to be laid upon such changes as these because they are simple commonsense; stupidity and the repetition of meaningless and outworn formulas have played a much greater part in the history of international affairs than one likes to remember. There is an infinite deal of solemn nonsense in intergovernmental communications of the past (and in some of the present) which no diplomat at a conference table nowadays could say with a straight face, particularly when he realized that the newspapers would print it the next morning. The Covenant has set up the machinery of the newer method.

It is here too that events have answered some honest doubts. It was suggested as obvious and beyond dispute that machinery could not change human nature and much less could change governments, composed of personages of special and restricted groups, reflecting very often only narrow and local thinking. This view has proved to be both superficial and erroneous. Some one said once that governments would not be perfect until their citizens were perfect and needed no governments; no doubt it is equally true that with perfect governments there would be no need of a League; while waiting for that millennial era, we have learned that it is a nearly universal trait of mankind to use a system when it is available and to accept a more settled and smoothly working order with the system than without. This is just as true in the science of government as in any other phase of civilization. Some kind of organization with some sort of procedure is the indispensable prerequisite of any group decision or action or even deliberation. The machinery of the League is not, as some thought, an end in itself; but it is now an indispensable means to any end; and the world is using it.

Even the United States is using it. The episode of Newberry, the illness of Wilson and the tergiversation of Lodge, with the

following political impasse, kept our country from membership in the League, which in a very real sense was a creation of American public sentiment; for our thought of a League did not originate with Wilson at all; he took it over from those leaders here who had earlier advocated the idea and who were mostly not of his party. Indeed, it is generally forgotten that while the Senate was Republican in 1919, some eighty Senators (out of ninety-six) voted for the Treaty of Versailles, which failed only because of varying forms of certain reservations.

However, the supposed necessity of winning the Presidential election of 1920 (which was won anyway) led to the conflicting and ambiguous campaign declarations which successfully brought those of every and any possible view into the Republican majority, thus swelled to an enormous figure.

The early and quite mistaken interpretation of the returns as a vote on the League, pro and con, and the meaningless trial balloons for an "association" of Nations, were perhaps responsible for the ensuing silly season during the early days of the Harding régime when letters from the League of Nations were unacknowledged and when the League documents desired for the use of our Government were paid for by personal checks, so as to conceal or obscure the actual Treasury disbursement.

This of course was too absurd to last. Our contacts with the League are now close. We participate in many ways in its activities and we discuss disarmament at Geneva under Article 8 of the Covenant. Officially we have every sympathy with the League; we were even willing to sit with the Council and the Assembly to choose Judges of the Permanent Court. The possibility of still closer participation remains open.

Prophecy is no part of my task; but one prediction is safe. American membership in the League is merely a question of the existence of the League; the one involves the other. If the League goes on, we join. The time is uncertain, but with no less certainty of the fact; and a future generation of Americans will look back at the utterances of alleged "saviours" of the country with the same amused and contemptuous incredulity as ours when we read of those other "statesmen" of the time of Grant who said that the Red Cross was surely contrary to the Monroe Doctrine.

The Covenant since it went into force in 1920 has been weighed in the balance of the happenings in world affairs; and it has not been found wanting. I doubt if even its authors, if they were all here and could turn the clock back, would change

it much from what was then written. That the Covenant took account of the realities and dealt with them as facts to be faced and not ignored, is shown by its working through the troublous times of the past years; and any one who has read what I have written will know that this quality of the document was in large part due to the sagacity of Viscount Cecil.

No one could suggest, and certainly I would be the last to do so, that the Covenant is even approximately a finality. On the contrary, I would say that one of the chief merits of the Covenant is that it does not attempt finality. Written for the world that is, and not seeking eternal wisdom, it has in its words and in its spirit the promise of betterment hereafter. These years have brought attempts to carry further its international system, and those very attempts, notably the Treaty of Mutual Assistance and the Geneva Protocol, have shown that this Covenant still fits the world of today and that the scroll must still unroll before the future changes come. The system of law must develop along with the belief in the system; it is the logic of experience rather than the logic of argument that will lead the nations further along the road of arbitration, security and disarmament.

So far as I know it, I have told the story of the language of the League of Nations idea from the time that it was written in the Phillimore Plan until it became the Covenant. The story is only worth the telling because the idea did become the Covenant, a Treaty in force among five Great Powers and fifty others.

The history of the evolution of a document is of necessity a very weary tale. I well appreciate that far more important than the origin of phrases and the changes of verbiage is what has happened under the document as finally written, how the world has lived with the Covenant and how international relations are actually conducted; but these have been no part of my task; my contribution has touched only that minor and less important phase of the beginnings; but if the League of Nations shall, as I think, in even nobler form and being, endure throughout that future which I may look but never see, then this story will remain as a part of the record of that institution, the foundations of which were laid by Woodrow Wilson.

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